IDAHO CODE

TITLES 7 to 13

SPECIAL PROCEEDINGS to APPEALS IN CIVIL ACTIONS

Current through 2020 Regular Session

MICHIE

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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO ANNOTATED

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COMMISSIONERS

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TITLES 7–13

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This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports: Idaho Reports

Pacific Reporter

Federal Supplement

Federal Reporter

United States Supreme Court Reports, Lawyers' Edition Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936

1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952
1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971

1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997
1998	March 23, 1998
1999	March 19, 1999

2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014
2015	April 11, 2015
2015 (E.S.)	May 18, 2015
2016	March 25, 2016
2017	March 29, 2017
2018	March 28, 2018
2019	April 11, 2019
2020	March 20, 2020

Title 7
SPECIAL PROCEEDINGS

Chapter

Chapter 1. Preliminary Provisions. [Repealed.]
Chapter 2. Writs of Review, §§ 7-201 — 7-209.
Chapter 3. Writs of Mandate, §§ 7-301 — 7-314.
Chapter 4. Writs of Prohibition, §§ 7-401 — 7-404.
Chapter 5. Provisions Applicable to Writs in General. [Repealed.]
Chapter 6. Contempts, §§ 7-601 — 7-616.
Chapter 7. Eminent Domain, §§ 7-701 — 7-721.
Chapter 8. Change of Names, §§ 7-801 — 7-805.
Chapter 9. Uniform Arbitration Act, §§ 7-901 — 7-922.
Chapter 10. Uniform Interstate Family Support Act, §§ 7-1001 — 7-1077.
Chapter 11. Proceedings to Establish Paternity, §§ 7-1101 — 7-1126.
Chapter 12. Enforcement of Child Support Orders, §§ 7-1201 — 7-1206.
Chapter 13. Judicial Confirmation, §§ 7-1301 — 7-1313.
Chapter 14. Family Law License Suspensions, §§ 7-1401 — 7-1417.
Chapter 15. Small Lawsuit Resolution Act, §§ 7-1501 — 7-1512.

Idaho Code Ch. 1

Chapter 1
PRELIMINARY PROVISIONS

Sec.

7-101, 7-102. [Repealed.]

§ 7-101. Designation of parties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 724; R.S., R.C., & C.L., § 4955; C.S., § 7240; I.C.A., § 13-101, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Civil Procedure Rules 1(a) and 3(a).

§ 7-102. Definitions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 725; R.S., R.C., & C.L., § 4956; C.S., § 7241; I.C.A., § 13-102, was repealed by S.L. 1975, ch. 242, § 1.

Idaho Code Ch. 2

Chapter 2
WRITS OF REVIEW

Sec.

7-201. Designation.

7-202. When granted.

7-203 — 7-207. [Repealed.]

7-208. Extent of review.

7-209 — 7-211. [Repealed.]

§ 7-201. Designation. — The writ of certiorari may be denominated the writ of review and shall be processed in the manner provided by rule of the supreme court.

History.

C.C.P. 1881, § 726; R.S., R.C., & C.L., § 4961; C.S., § 7242; I.C.A. § 13-201; am. 1977, ch. 170, § 1, p. 436.

STATUTORY NOTES

Cross References.

Abbreviations and numbers used in pleadings, Idaho R. Civ. P. 10(a)(3).

Appeals, Idaho App. R. 3, 5.

Costs allowed as of course to defendant, Idaho R. Civ. P. 54(d)(1).

Court seal to be affixed to writs, § 1-1616.

Court terms abolished, Idaho R. Civ. P. 77(a).

Fees of clerk of supreme court upon filing application for writ, § 1-402.

New trials, Idaho R. Civ. P. 59(a) to 59(e).

Proceedings to be in English language, Idaho R. Civ. P. 10(a)(3).

Statute of limitations applicable to special proceedings of a civil nature, § 5-240.

Stenographic record to be furnished by court reporter, § 1-1105.

Successive applications for orders, Idaho R. Civ. P. 11(a)(2).

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Nature of writ.

Review denied.

Nature of Writ.

In adoption and ratification of constitution, power to issue writ therein granted to supreme court was limited to writ then known and in use in territory. Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

Review is limited to sole question of whether or not the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer. Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928).

A notice of appeal will not serve as a petition for a writ of review or certiorari as provided in this section. State v. Berlin, 95 Idaho 225, 506 P.2d 122 (1973).

Review Denied.

Where state did not appeal from order withholding judgment, it could not appeal from previous order reducing charges from felony to misdemeanor as such order did not fall within the language of Idaho App. R. 11(c)(3) or (6); nor would supreme court exercise its plenary power to hear such appeal, under Idaho Const., Art. V, § 9, or treat the appeal as a petition for a writ of review under this section. State v. Molinelli, 105 Idaho 833, 673 P.2d 433 (1983).

Cited Electors v. State Bd. of Educ., 78 Idaho 602, 308 P.2d 225 (1957); Amlin v. Hamilton, 108 Idaho 320, 698 P.2d 838 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Certiorari, § 1 et seq.

C.J.S. — 14 C.J.S., Certiorari, § 1 et seq.

Idaho Code § 7-202

§ 7-202. When granted. — A writ of review may be granted by any court except the magistrates division of the district court, when an inferior tribunal, board or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

History.

C.C.P. 1881, § 727; R.S., R.C., & C.L., § 4962; C.S., § 7243; I.C.A., § 13-202; am. 1977, ch. 170, § 2, p. 436.

STATUTORY NOTES

Cross References.

Jurisdiction of district court, § 1-705.

Jurisdiction of supreme court, Idaho Const., Art. V, § 9; § 1-202.

CASE NOTES

Another adequate remedy.

Appeal.

Applicability.

Contempt order.

Extent of review.

Operating property.

Time of application.

To whom issued.

When issued.

When not issued.

Another Adequate Remedy.

If a court undertakes to proceed in a matter without or in excess of its jurisdiction, remedy of one who is affected by such contemplated action is by writ of prohibition, not by writ of review. Gunderson v. District Court, 14 Idaho 478, 94 P. 166 (1908).

Writ of review will be denied where relief can be obtained by writ of mandate. Kootenai County v. State Bd. of Equalization, 31 Idaho 155, 169 P. 935 (1917).

Constitutional writ is not available when there is plain, speedy, and adequate remedy at law. Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

Writ of review will not be granted unless trial court has exceeded its jurisdiction and no speedy or adequate remedy by appeal or otherwise is available. Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928); Vaught v. District Court, 46 Idaho 642, 269 P. 595 (1928).

Even if there is a lack or excess of jurisdiction, prohibition will not ordinarily issue if there is another adequate remedy of review. Gasper v. District Court, 74 Idaho 388, 264 P.2d 679 (1953).

Appeal.

Allegation in a petition for writ of certiorari that, if appeal be taken, expense will be heavy and disproportionate to amount plaintiff will recover is not a reason why appeal will not be a plain, speedy, and adequate remedy, and does not warrant the supreme court in reviewing judgment by writ of certiorari. Canadian Bank of Commerce v. Wood, 13 Idaho 794, 93 P. 257 (1907).

Supreme court cannot entertain an appeal directly from an order of the public utilities commission. Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

Order in divorce suit granting alimony, suit money, and attorney's fees is not appealable order. Crosslin v. Crosslin, 35 Idaho 765, 208 P. 402 (1922); Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

"No appeal," as used in this section, means direct appeal from particular order in question. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

Writ of review will not lie when there is remedy by appeal. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924); Malloy v. Keel, 43 Idaho 211, 250 P. 389 (1926).

When the legislature provided for an "appeal" from any order of the state board of education, the supreme court could not hold that it intended to say "writ of review," such appeal involving a petition to detach an area from one school district and join it to another. Electors v. State Bd. of Educ., 78 Idaho 602, 308 P.2d 225 (1957).

Applicability.

Writ of review will lie:

To review an order appointing a receiver. Sweeny v. Mayhew, 6 Idaho 455, 56 P. 85 (1899).

To review an order of probate judge in supplementary proceedings requiring garnishee to pay certain money, claimed to be exempt, to sheriff in satisfaction of judgment. Gans v. Steele, 7 Idaho 143, 61 P. 286 (1900).

To review an order disbarring an attorney made without application therefor or notice to attorney. Good v. Steele, 8 Idaho 538, 69 P. 319 (1902).

To review and correct an order of district court quashing jury panel made in excess of jurisdiction of court. Heitman v. Morgan, 10 Idaho 562, 79 P. 225 (1905).

To review an order granting alimony and suit money, although such result might be accomplished by appeal from final judgment in case. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

To determine the sufficiency of an appeal from the justice or the probate court to the district court; if the appeal as a matter of fact has been properly perfected, the district court has no jurisdiction except to try the case de novo or dismiss on the merits and dismissal of appeal would be excess of jurisdiction. State v. Stokes, 55 Idaho 51, 37 P.2d 404 (1934).

To review the action of the state board of equalization under a writ of review and determine whether it has exceeded its jurisdiction. Ada County v. Bottolfsen, 61 Idaho 64, 97 P.2d 599 (1939).

Contempt Order.

A writ of review is a proper method to seek a higher court's review of a lower court's jurisdiction to issue a contempt order. Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993).

A contempt order of a magistrate judge that is certified by the magistrate judge to be final as provided by Idaho R. Civ. P. 54(b) is appealable to the district judge. Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993).

If a contempt order is properly certified to be final, the party who seeks review of the order must appeal, rather than pursue a writ of review; however, if a party wishes only to challenge the jurisdiction of the court to issue the contempt order, and if the order has not been properly certified as final pursuant to Idaho R. Civ. P. 54(b), the party may pursue a writ of review. Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993).

Where defendant did not request certification of the magistrate judge's finding of contempt and order pursuant to Idaho R. Civ. P. 54(b), defendant did not have the right to appeal, but only to challenge, by means of a writ of review, the magistrate judge's jurisdiction to issue a contempt order. Beeman v. Petrie, 123 Idaho 838, 853 P.2d 583 (1993).

Extent of Review.

In reviewing an order holding a party in contempt of court, while the reviewing court may not weigh the evidence, it has the right to examine the record to determine whether there is any substantial evidence to support the order of the trial court; for if there is a lack of evidence, then the trial court would have acted in excess of its jurisdiction. Mathison v. Felton, 90 Idaho 87, 408 P.2d 457 (1965).

In a petition for writ of review, the sole question before the court was whether the district court acted within its jurisdiction in finding the petitioner in contempt for violation of a previously issued injunction and whether substantial competent evidence supported the court's findings; the fact that the proceeding resulted from a contempt adjudication did not change that standard of review. Shaub v. District Court of Fifth Judicial Dist., 96 Idaho 924, 539 P.2d 277 (1975).

Operating Property.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor

either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property, depending upon the commission's definition of operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after the same property had already been assessed as operating by the commission. Union Pac. Land Res. Corp. v. Shoshone County Assessor, 140 Idaho 528, 96 P.3d 629 (2004).

Time of Application.

Time within which an appeal may be taken in appealable cases will be deemed to be limit of a reasonable time for an application for writ of review, unless exceptional circumstances be shown which justify extension of time. Pullman Co. v. State Bd. of Equalization, 31 Idaho 316, 171 P. 260 (1918).

To Whom Issued.

Writ may issue out of the supreme court to state board of equalization to review its action in improperly reducing or increasing assessed valuation of classes of property. Orr v. State Bd. of Equalization, 3 Idaho 190, 28 P. 416 (1891).

Board of county commissioners is not a judicial tribunal to which writ of review may issue. Rogers v. Hayes, 3 Idaho 597, 32 P. 259 (1893).

Writ may issue out of district court to probate or justice's courts. Gans v. Steele, 7 Idaho 143, 61 P. 286 (1900).

Writ will not issue out of supreme court to review judgment of justice of peace. Nordyke & Marmon Co. v. McConkey, 7 Idaho 562, 64 P. 893 (1901).

State board of canvassers, in canvassing election returns sent up by boards of canvassers of several counties and computing total vote received by each candidate and certifying to secretary of state names of persons who received majority or plurality, of all votes cast for each respective office, is discharging a ministerial duty rather than a judicial function; mathematical computation and calculation does not constitute exercise of judicial functions. Lansdon v. State Bd. of Canvassers, 18 Idaho 596, 111 P. 133 (1910).

When Issued.

For writ of certiorari to be granted under this section it must appear: (1) That lower court exceeded its jurisdiction; (2) that there was no appeal; (3) that there was no other plain, speedy or adequate remedy. People v. Lindsay, 1 Idaho 394 (1871); Dahlstrom v. Portland Mining Co., 12 Idaho 87, 85 P. 916 (1906); Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928); Vaught v. District Court, 46 Idaho 642, 269 P. 595 (1928).

Writ will only issue where officer or board has exceeded jurisdiction, not for erroneous action. First Nat'l Bank v. Washington County, 17 Idaho 306, 105 P. 1053 (1909); Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928).

Upon writ of review issued upon order for imprisonment for contempt until performance of act, review extends to evidence itself to extent of inquiring whether there was any evidence to furnish substantial basis for adjudging party guilty of contempt and that act is "in power of person to perform." Vollmer v. Vollmer, 46 Idaho 97, 266 P. 677 (1928).

Petition to determine validity of title selected by attorney-general for initiated measure is in the nature of a proceeding for a writ of certiorari or review. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Issue presented was whether plaintiff, who was appointed by county commissioners, or defendant, elected in the general election, is probate judge for period from general election on November 3, 1964, to date set by legislature for assumption of office by county elective officers, following general election; therefore, the proceeding being both for review (certiorari) and for writ of mandate, supreme court had jurisdiction to determine the issue. White v. Young, 88 Idaho 188, 397 P.2d 756 (1964).

When Not Issued.

Writ of review will not issue:

To review judgment while case is still pending on motion for new trial. People v. Lindsay, 1 Idaho 394 (1871).

To review illegal acts of board of county commissioners from which appeal will lie. Rogers v. Hayes, 3 Idaho 597, 32 P. 259 (1893); Bobbitt v. Blake, 25 Idaho 53, 136 P. 211 (1913).

To review order denying change of venue in disbarment proceedings. State v. Goode, 4 Idaho 730, 44 P. 640 (1896).

To review ministerial act on part of city council, such as letting of paving contract. Adleman v. Pierce, 6 Idaho 294, 55 P. 658 (1898).

To review order made after judgment, from which appeal will lie. Porter v. Steele, 7 Idaho 414, 63 P. 187 (1900); Dahlstrom v. Portland Mining Co., 12 Idaho 87, 85 P. 916 (1906).

To pass upon constitutionality of an act upon application of private person for protection of his private property rights. McConnell v. State Bd. of Equalization, 11 Idaho 652, 83 P. 494 (1905). See also Weiser Nat'l Bank v. Washington County, 30 Idaho 332, 164 P. 1014 (1917).

To review decision of district judge appointing commissioners in eminent domain proceedings unless he has exceeded his jurisdiction. Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908).

To review order made by district court within jurisdiction of such court and after having acquired jurisdiction of person and subject-matter, however erroneous it may have been. Utah Ass'n of Credit Men v. Budge, 16 Idaho 751, 102 P. 390 (1909); Shumake v. Shumake, 17 Idaho 649, 107 P. 42 (1910); Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928).

To review a judgment of conviction in police court, appeal from which is pending. State v. Hosford, 27 Idaho 185, 147 P. 286 (1915).

To review exercise of discretion or judgment in performance of official duties by state elective officers. Northwest Light & Power Co. v. Alexander, 29 Idaho 557, 160 P. 1106 (1916).

For purpose of having lawfulness of an original order or decision of public utilities commission inquired into and determined. Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

To review order restraining party to action from alienating, encumbering or disposing of his property, since appeal lies from such order. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

To review order in foreclosure suit joining tenants, appointing receiver, and enjoining tenants from disposing of rent during redemption period. Malloy v. Keel, 43 Idaho 211, 250 P. 389 (1926).

To inquire into weight or sufficiency of evidence, under ordinary circumstances. Vollmer v. Vollmer, 46 Idaho 97, 266 P. 677 (1928).

To review order in condemnation proceeding adjudging necessity for taking land and appointing commissioners to view and value premises. Northwestern & Pac. Hypotheekbank v. Sutphen, 50 Idaho 720, 300 P. 496 (1931).

A writ of review will not lie from a decision of a district court acting within its jurisdiction and hearing de novo a case on appeal from a municipal court. State v. Berlin, 95 Idaho 225, 506 P.2d 122 (1971).

Cited Gilbert v. Elder, 65 Idaho 383, 144 P.2d 194 (1943); Boise Community Hotel Co. v. Board of Equalization, 88 Idaho 564, 401 P.2d 799 (1965); Harrigfeld v. District Court of Seventh Judicial Dist., 95 Idaho 540, 511 P.2d 822 (1973); Dutton v. District Court, 95 Idaho 720, 518 P.2d 1182 (1974); Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

§ 7-203 — 7-207. Application and order to show cause — Writ — Contents, service and how directed — Stay of proceedings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 728 — 732; R.S., R.C., & C.L., §§ 4963 — 4967; C.S., §§ 7244 — 7248; I.C.A., §§ 13-203 — 13-207, were repealed by S.L. 1977, ch. 170, § 3.

§ 7-208. Extent of review. — The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

History.

C.C.P. 1881, § 733; R.S., R.C., & C.L., § 4968; C.S., § 7249; I.C.A., § 13-208.

CASE NOTES

Action of governor in removing officer.

Constitutionality of statutes.

Contempt order.

Discretionary acts.

Nature of writ.

Question of jurisdiction.

Review of evidence.

Action of Governor in Removing Officer.

As long as the action of the governor in removing an officer is within the limits of power conferred upon him, the courts will not interfere to arrest his action or to review the proceedings, except to determine the question of jurisdiction; the governor, so far as the courts are concerned, is the exclusive judge of the sufficiency of proof of the charges, and the court will not review the facts upon which he acted except for the purpose of ascertaining if there is any evidence which supports his findings and order. Hawley v. Bottolfsen, 61 Idaho 101, 98 P.2d 634 (1940).

Constitutionality of Statutes.

In proceedings upon writ of review, constitutionality of statute upon which inferior tribunal based its authority cannot be passed upon. Weiser Nat'l Bank v. Washington County, 30 Idaho 332, 164 P. 1014 (1917).

Contempt Order.

The supreme court cannot reverse an order holding a party in contempt of court for disobedience of an order based upon a judgment which has since been reversed, but a provision in the order sentencing the party to jail, with sentence suspended upon his compliance with the order based upon such judgment, will be set aside. Mathison v. Felton, 90 Idaho 87, 408 P.2d 457 (1965).

A judgment of the trial court holding the appellant in contempt of court was sustained where the record showed evidence sufficient to sustain a finding that appellant had violated an order which a previous appeal had determined to be valid. Berry v. District Court, 91 Idaho 600, 428 P.2d 519 (1967).

While the supreme court has plenary power under Idaho Const., Art. V, § 9, to review a contempt case and contempt orders, a writ of review remains the proper method of securing review of a contempt order in the usual case. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Where orders of contempt are examined under a writ of review, the prime question for determination is whether the inferior tribunal exceeded its jurisdiction. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Discretionary Acts.

Where state elective officers are invested with certain discretion, involving exercise of judgment in performance of their official duties, no court has right by writ of certiorari to interpose its judgment or influence their action. Northwest Light & Power Co. v. Alexander, 29 Idaho 557, 160 P. 1106 (1916).

Nature of Writ.

In the adoption and ratification of constitution, power to issue the writ therein granted to the supreme court was limited to the writ then known and in use in territory. Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

Review is limited to the sole question of whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer. Hawley v. Bottolfsen, 61 Idaho 101, 98 P.2d 634 (1940).

A "writ of review" brings up the record of the tribunal, board, or body whose acts are to be examined and is issued for reviewing the law applicable to the case, instead of examining the facts of the case, except as an examination of the facts is necessary in the determination of jurisdiction; the purpose of the review is to determine primarily the law applicable to the case rather than the facts of the case. Hawley v. Bottolfsen, 61 Idaho 101, 98 P.2d 634 (1940).

Petition to determine validity of title selected by attorney-general for initiated measure is in the nature of a proceeding for a writ of certiorari or review. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Question of Jurisdiction.

On certiorari to review an order of board of equalization raising an assessment, only question which can be considered is jurisdiction of board; mere irregularities will not be reviewed. Murphy v. Board of Comm'rs, 6 Idaho 745, 59 P. 715 (1899); Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908); State Ins. Fund v. Hunt, 52 Idaho 639, 17 P.2d 354 (1932).

Where writ of review is asked upon ground that judge of district court had exceeded his jurisdiction in hearing and determining cause at chambers, and the return, which contains a copy of court record, shows that cause was heard and determined at a regular term, writ will be discharged. Porter v. Steele, 7 Idaho 414, 63 P. 187 (1900).

Certiorari and not mandate is the proper remedy to review and correct an order of the district court quashing a jury panel made in excess of jurisdiction. Heitman v. Morgan, 10 Idaho 562, 79 P. 225 (1905).

Writ of review is not a remedy for correcting errors and mistakes of judgment or for purpose of reviewing facts upon which inferior tribunal, board, or officer acted, but its province is limited to a review of questions of law, confined to the specific question as to whether or not the action complained of was in excess of jurisdiction conferred on tribunal, board, or officer. McConnell v. State Bd. of Equalization, 11 Idaho 652, 83 P. 494 (1905).

Error of law or fact committed by inferior tribunal within the limits of its jurisdiction does not constitute an excess of its jurisdiction. Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928).

Sole issue in determination of writ of review is whether the trial court exceeded its jurisdiction in making disputed order. Specialty Sales, Inc. v. Graf, 73 Idaho 113, 245 P.2d 820 (1952).

Where a case is brought before the supreme court on a writ of review, the sole question for determination is whether the inferior tribunal exceeded its jurisdiction. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972).

On a petition for writ of review, the sole question before the court was whether the district court acted within its jurisdiction in finding the petitioner in contempt for violation of a previously issued injunction and whether substantial competent evidence supported the court's findings; the fact that the proceeding resulted from a contempt adjudication did not change that standard of review. Shaub v. District Court of Fifth Judicial Dist., 96 Idaho 924, 539 P.2d 277 (1975).

Review of Evidence.

On certiorari to review an order appointing a receiver, court may review evidence introduced in district court, so far as is necessary to determine whether jurisdictional facts authorizing such appointment were proved. Sweeny v. Mayhew, 6 Idaho 455, 56 P. 85 (1899).

The writ does not lie to review facts, except insofar as facts are essential to determine jurisdictional question. First Nat'l Bank v. Washington County, 17 Idaho 306, 105 P. 1053 (1909); Lansdon v. State Bd. of Canvassers, 18 Idaho 596, 111 P. 133 (1910); Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

On the original writ of review in the supreme court to review the action of the Governor in removing a commissioner of the Idaho fish and game commission, inquiry is limited to whether the charges filed against the commissioner constitute charges of inefficiency, neglect of duty, or misconduct in office, and whether there was any evidence adduced to support the charges sustained by the order of removal. Hawley v. Bottolfsen, 61 Idaho 101, 98 P.2d 634 (1940).

Cited Gans v. Steele, 7 Idaho 143, 61 P. 286 (1900); Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Certiorari, § 93 et seq.

C.J.S. — 14 C.J.S., Certiorari, § 92 et seq.

§ 7-209 — 7-211. Defective return — Full return — Hearing and judgment — Transmittal of judgment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 734 — 736; R.S., R.C., & C.L., §§ 4969 — 4971; C.S., §§ 7250 — 7252; I.C.A., §§ 13-209 — 13-211, were repealed by S.L. 1977, ch. 170, § 3.

Chapter 3
WRITS OF MANDATE

Sec.

7-301. Designation.

7-302. When and by what courts issued.

7-303. Absence of adequate remedy.

7-304. Form of writ.

7-305. Notice of application — Hearing.

7-306, 7-307. [Repealed.]

7-308. Objections to answer.

7-309. Motion for new trial.

7-310. Certification of verdict — Argument.

7-311. Trial on pleadings.

7-312. Damages.

7-313. Service of writ.

7-314. Disobedience of writ — Penalty.

§ 7-301. Designation. — The writ of mandamus may be denominated a writ of mandate.

History.

C.C.P. 1881, § 737; R.S., R.C., & C.L., § 4976; C.S., § 7253; I.C.A., § 13-301.

STATUTORY NOTES

Cross References.

Abbreviations and numbers, use in pleadings, Idaho R. Civ. P. 10(a)(3).

Appeals, Idaho R. Civ. P. 62(c), Idaho App. R. 3.

Costs allowed, Idaho R. Civ. P. 54(d)(1).

Court seal to be affixed to writs, § 1-1616.

Fee of clerk of supreme court upon filing application for writ, § 1-402.

General or special verdict authorized, Idaho R. Civ. P. 49(a), 49(b).

Initiative and referendum elections, secretary of state may be compelled to file, § 34-1808.

Jury trial, Idaho R. Civ. P. 38(b).

New trials, Idaho R. Civ. P. 59(a) to 59(e).

Proceedings to be in English language, Idaho R. Civ. P. 10(a)(3).

Special writs, Idaho App. R. 5.

Statute of limitations applicable to special proceedings, of a civil nature, § 5-240.

Successive application for writs, Idaho R. Civ. P. 11(a)(2).

Trial by jury may be waived, Idaho R. Civ. P. 38(d).

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Distinguished from prohibition.

Filing of tax returns.

When issued.

Distinguished from Prohibition.

Writ of mandate is distinguished from writ of prohibition in that the element want of jurisdiction is not present in this statute but is an indispensable element of prohibition. Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934).

Filing of Tax Returns.

The legislature in providing for the use of a writ of mandate to compel the filing of tax returns under § 63-3030A obviously intended the statute to be read in pari materia to the general writ of mandate statutes. Mitchell v. Agents of State, 105 Idaho 419, 670 P.2d 520 (1983).

When Issued.

A writ of mandate was the proper remedy to compel county treasurer and ex officio tax collector to allow the redemption of certain lands from tax deed made as a result of failure to pay taxes on such lands. Winans v. Swisher, 68 Idaho 364, 195 P.2d 357 (1948).

Cited Idaho State Tax Comm'n v. Staker, 104 Idaho 734, 663 P.2d 270 (1982); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990); Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

§ 7-302. When and by what courts issued. — It may be issued by the supreme court or any district court to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and the enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

History.

C.C.P. 1881, § 738; R.S., R.C., & C.L., § 4977; C.S., § 7254; I.C.A., § 13-302; am. 1996, ch. 224, § 1, p. 736.

STATUTORY NOTES

Cross References.

Jurisdiction of district court, § 1-705.

Jurisdiction of supreme court, § 1-202 and Idaho Const., Art. V.

CASE NOTES

Affidavit.

Another adequate remedy.

Board of land commissioners.

Conclusiveness of judgment.

Injunction distinguished.

Jurisdiction.

Limitations and laches.

Other adequate remedies.

Prerequisites to issuance.

Proper remedy.

Scope of review.

Scope of writ.

To whom directed.

When issued.

When not issued.

Affidavit.

Verified complaint satisfies the requirement that the writ must be issued upon affidavit. State ex rel. Graham v. Enking, 59 Idaho 321, 82 P.2d 649 (1938).

Another Adequate Remedy.

Where a bondholder has a plain, speedy, and adequate remedy for the collection of principal or interest due from property owners who have failed to pay assessments made by the city authorities on property within a special improvement district, a writ of mandamus may not be resorted to for the collection of the bonded indebtedness and interest thereon. New First Nat'l Bank v. City of Weiser, 30 Idaho 15, 166 P. 213 (1916).

Where an order is appealable, mandate will not lie. Aker v. Aker, 51 Idaho 555, 8 P.2d 777 (1932).

Where, through fault of the city clerk, the assessment roll, standing as security for the payment of special or local improvement district bonds, was inadequate, bondholders' only adequate relief was to have the property in the district exclusive of lots sold for general taxes and reassessed for payment of deficit, with interest from the date of the maturity of the bonds. Maguire v. Whillock, 63 Idaho 630, 124 P.2d 248 (1942).

Board of Land Commissioners.

The state board of land commissioners is required to use considerable judgment in the granting of mineral leases; thus, a writ of mandate would not be available to compel them to issue a lease in the absence of conduct that is arbitrary, capricious or discriminatory. Allen v. Smylie, 92 Idaho 846, 452 P.2d 343 (1969).

Conclusiveness of Judgment.

Judgment in mandamus is as conclusive as judgment in any other action and operates as an estoppel against further investigation in another action between same parties of any facts necessarily in issue or which were pleaded and decided therein. Lawrence v. Corbeille, 32 Idaho 114, 178 P. 834 (1919).

Defendant commissioner appealed from judgment of trial court in mandamus proceedings requiring his approval as to form and content and return to plaintiff of articles of incorporation for a bank and issuance to it of certificate or charter authorizing it to engage in the banking business when the trial court had held that the right of the plaintiffs to recover was to be determined by facts existing at the time of the commencement of the action and their right could not be prejudiced or affected by the subsequent action of the defendant in thereafter making findings of fact. Leuhrs v. Spaulding, 80 Idaho 326, 328 P.2d 582 (1958).

Injunction Distinguished.

When a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have mandamus to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have injunction to prevent it; in such cases, writs of mandamus and injunction are somewhat correlative to each other. Murtaugh Hwy. Dist. v. Merritt, 59 Idaho 603, 85 P.2d 685 (1938).

Jurisdiction.

Where application for declaratory judgment in mandamus was initiated to compel secretary of state to file petitioner's declaration of candidacy, the supreme court, in determining its jurisdiction to hear and decide the case is only concerned with whether the action belongs to that class of cases of which supreme court has original jurisdiction. Boughton v. Price, 70 Idaho 243, 215 P.2d 286 (1950).

Issue presented was whether plaintiff, who was appointed by county commissioners, or defendant, elected in the general election, is probate judge for period from general election on November 3, 1964, to date set by

legislature for assumption of office by county elective officers, following general election; therefore, the proceeding being both for review (certiorari) and for writ of mandate, supreme court had jurisdiction to determine the issue. White v. Young, 88 Idaho 188, 397 P.2d 756 (1964).

Once the supreme court has asserted its original jurisdiction, it may issue writs of mandamus and/or prohibition. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Limitations and Laches.

Where mandamus to compel reassessment of property within a special or local improvement district was brought some 18 months after actual notice of the deficiency, through the city clerk's fault, the action was not barred by limitation. Maguire v. Whillock, 63 Idaho 630, 124 P.2d 248 (1942).

Other Adequate Remedies.

Where an agency petitioned for a writ of mandamus to require agency officials to sign a resolution for the issuance of certain bonds, and to proceed to publish notice and execute the bonds, since the agency had available to it other adequate remedies at law and sufficient time within which to pursue those remedies, all mandamus relief requested by the agency could have been accomplished at the district court level by a declaratory judgment action or in other proceedings, and the petition for issuance of a writ of mandamus was denied. Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

Prerequisites to Issuance.

It should appear in order for a mandamus to issue from the applicatory affidavit and proofs: First, that a duty is imposed upon defendant that it is sought to have him fulfill; second, that plaintiff has the right to demand performance of that duty; third, that legal demand has been made accompanied with a payment or tender of whatever is required as a concomitant of the demand imposed by law; fourth, that defendant has the ability to comply without impairing rights of nonparty, third persons; fifth, that defendant has no plain, speedy and adequate remedy otherwise. Lewis v. Mountain Home Coop. Irrigation Co., 28 Idaho 682, 156 P. 419 (1916).

Before writ of mandate will issue commanding certain acts to be done, there must be a demand and a refusal. Pfirman v. Success Mining Co., 30

Idaho 468, 166 P. 216 (1917); Berding v. Varian, 34 Idaho 587, 202 P. 567 (1921).

Writ will not issue unless petitioner has clear legal right to performance of act demanded and it is clear legal duty of officer to act. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

Where it sufficiently appears from application that applicant seeks "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station," motion to dismiss will be denied. State ex rel. Capital Inv. Co. v. Lukens, 48 Idaho 357, 283 P. 527 (1929).

Mandamus will not issue unless petitioner has a clear legal right to have the act done for which he seeks the writ and the allowance or refusal of the writ is discretionary with the court hearing the application. Aker v. Aker, 51 Idaho 555, 8 P.2d 777 (1932); Reynard v. City of Caldwell, 53 Idaho 62, 21 P.2d 527 (1933).

Party seeking writ of mandamus must have the clear legal right to have act done and there must be a clear legal duty for officer to act. Vandenberg v. Welker, 74 Idaho 508, 264 P.2d 1029 (1953).

In no case, as a condition to the right to mandamus are the plaintiffs required to make a definite and specific written demand upon a defendant that he do and perform the act sought. Leuhrs v. Spaulding, 80 Idaho 326, 328 P.2d 582 (1958).

Under this section, the court has repeatedly held that mandamus will not lie unless party seeking it has clear legal right to have done that for which he seeks the writ and unless it is clear legal duty of officer to act, and it will not lie to coerce or control discretion of the district court. Freeman v. McQuade, 80 Idaho 387, 331 P.2d 263 (1958); Fitzpatrick v. Welch, 96 Idaho 280, 527 P.2d 313 (1974).

When there was no duty resting on the defendant to make the tax levy, the writ of mandate was properly denied. Board of Trustees v. Board of County Comm'rs, 88 Idaho 250, 398 P.2d 442 (1965).

Under this section, writ of mandate will not lie where district court had no legal right to enter judgment in quiet title action and party seeking writ had blocked prompt entry of judgment by failing to comply with court's orders regarding selection of a surveyor and had obtained a survey which

failed to comply with court's explicit directions. Felton v. Prather, 95 Idaho 280, 506 P.2d 1353 (1973).

Where an agency simply alleged in its verified petition for a writ of mandamus that, if agency officials do not sign a resolution for the issuance of certain bonds and proceed to publish notice and execute the bonds, the urban renewal project to be funded by such bonds cannot be completed and the will of the citizens would be thwarted, and where there was no proof to support the agency's assertion that it had no other plain, speedy or adequate remedy, the agency failed to prove that a writ of mandamus was its only adequate remedy under the circumstances; the law requires more than conclusions and allegations to warrant the issuance of such a writ, and the petition for issuance of a writ of mandamus was denied. Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

Proper Remedy.

Proceeding for writ of mandate against county equalization board and county assessor was proper remedy rather than payment of tax and suit for refund, where state tax board reduced assessment made by county assessor and affirmed by county equalization board. Utah Oil Ref. Co. v. Hendrix, 72 Idaho 407, 242 P.2d 124 (1952).

Where county board of canvassers certifies to county auditor name of first candidate as Republican candidate for probate judge, but auditor mistakenly issues certificate of nomination to another who declines it and second candidate is then designated Republican candidate by Republican county central committee, following which auditor issues certificate of nomination to first candidate, writ of mandamus is the proper procedure to determine whether county auditor should be required to cause second candidate's name as Republican candidate for probate judge to be included on the general election ballot. Hansen v. Devaney, 82 Idaho 488, 356 P.2d 57 (1960).

Mandamus was proper to compel a county treasurer to remit to the state treasurer tax withheld from current taxes as the state's pro rata share of a court-ordered refund of taxes erroneously collected in previous years. State ex rel. Williams v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

Mandamus is an appropriate means of enforcing the right to inspect public records. Dalton v. Idaho Dairy Prods. Comm'n, 107 Idaho 6, 684 P.2d 983 (1984).

A district court has the power, through the writ of mandamus, to compel a county official's performance of an act which the law enumerates as a duty of office. Adams County Abstract Co. v. Fisk, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

Scope of Review.

Where a teacher seeks a writ of mandate, not for reinstatement during the term of a contract, but to compel continued employment after a first-year contract has expired, judicial review is limited to determining whether the teacher has a clear legal right to the relief sought. The judicial inquiry does not extend to whether the school board acted arbitrarily, unjustly and in abuse of discretion. Knudson v. Boundary County School Dist. No. 101, 104 Idaho 93, 656 P.2d 753 (Ct. App. 1982).

Scope of Writ.

Writ of mandate can not be used to correct errors of district court or inferior tribunal, in passing upon questions regularly submitted to it in course of judicial proceeding or to control exercise of its discretion. Board of County Comm'rs v. Mayhew, 5 Idaho 572, 51 P. 411 (1897).

On application for writ of mandate to compel district court to comply with an order of supreme court, latter court will construe its own order in connection with its opinion and, if it finds that district court has erred or acted beyond its power in construing such order or opinion, error will be corrected by issuance of writ. American Hydraulic Placer Co. v. Rich, 8 Idaho 570, 69 P. 280 (1902).

Mandamus may be resorted to whenever an officer or person refuses to perform a duty enjoined upon him by law, although the act may have been an isolated one disconnected with any proceeding leading up to that which the recalcitrant official or individual refused to perform. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

Writ of mandate will not issue where officer against whom same is prayed for has performed acts sought to be compelled before issuance of writ. Chemung Mining Co. v. Morgan, 11 Idaho 232, 81 P. 384 (1905).

The general rule is that it is the proper office of a writ of mandamus, in case an inferior court refuses to act in matters over which it has jurisdiction, to compel such assumption of jurisdiction. Connolly v. Woods, 13 Idaho 591, 92 P. 573 (1907).

Writ of mandate can be used to compel court to act in matter where the law enjoins a duty, but not to control its discretion or direct its decision. Connolly v. Woods, 13 Idaho 591, 92 P. 573 (1907); Blackwell Lumber Co. v. Flynn, 27 Idaho 632, 150 P. 42 (1915); St. Michaels Monastery v. Steele, 30 Idaho 609, 167 P. 349 (1917).

Where statute or city ordinance vests in city official discretion in performance of a duty, and no provision is made for reviewing such action, determination of such matter by such official is final and can not be controlled by mandamus. Darby v. Pence, 17 Idaho 697, 107 P. 484 (1910).

Writ must be directed to a specific act or actions. Evans v. Van Deusen, 31 Idaho 614, 174 P. 122 (1918).

A citizen has a right to a writ of mandate to compel public officers to perform statutory public duty, even though he may have a right of action against a private individual which would redress private injury to himself. Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918).

The merits of judge's findings and order that he is disqualified are not before the court in a proceeding for writ of mandate to compel change of venue for disqualification of the judge. Newman v. District Court, 32 Idaho 607, 186 P. 922 (1920).

The courts will not issue a command to municipal officers with which they cannot comply. Cowan v. Lineberger, 35 Idaho 403, 206 P. 805 (1922).

Mandamus will not lie to coerce or control the discretion of the district court. Aker v. Aker, 51 Idaho 555, 8 P.2d 777 (1932).

Chief clerk and assistant clerk of house of representatives for 32nd session could be mandamused to deliver daily journals to secretary of state but could not be mandamused to designate same as the permanent journals. Vandenberg v. Welker, 74 Idaho 508, 264 P.2d 1029 (1953).

When the acts of a municipal corporation are discretionary and not mandatory, a writ of mandate will not lie to compel the performance of such

acts. Lisher v. City of Potlatch, 101 Idaho 343, 612 P.2d 1190 (1980).

To Whom Directed.

In an action for a writ of mandate to compel enforcement of a village ordinance, members of board of trustees of village and chairman thereof are officers to whom writ should be directed. Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918).

When Issued.

Writ of mandate will issue:

To require water company to deliver water after court has fixed reasonable compensation which must be paid for use of water. Wilterding v. Green, 4 Idaho 773, 45 P. 134 (1896).

To compel mayor of a city to sign warrants allowed and ordered by council. Rice v. Gwinn, 5 Idaho 394, 49 P. 412 (1897).

To compel board of examiners to pass upon a claim. Pyke v. Steunenberg, 5 Idaho 614, 51 P. 614 (1897), overruled on other grounds, Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

To compel administrator to execute a conveyance pursuant to an order of court confirming a sale. State ex rel. Chemung Mining Co. v. Cunningham, 6 Idaho 113, 53 P. 451 (1898).

To compel the secretary of state to file and certify a proper political nominating ticket. Williams v. Lewis, 6 Idaho 184, 54 P. 619 (1898), overruled on other grounds, Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

To require district court to proceed with a criminal case triable in such court. Hays v. Stewart, 7 Idaho 193, 61 P. 591 (1900).

To compel a county auditor to file a ticket duly nominated by a legal county convention. Addle v. Davenport, 7 Idaho 282, 62 P. 681 (1900).

To compel a court to consider a cause after it has erroneously determined that it has no jurisdiction. Hill v. Morgan, 9 Idaho 718, 76 P. 323 (1904).

To require a trial court to try a cause in accordance with a prior opinion of the supreme court after trial court has nonsuited plaintiff in disregard of

such opinion. Kroetch v. Morgan, 10 Idaho 172, 77 P. 19 (1904).

To compel clerk of the district court to file an information presented by prosecuting attorney. State v. Quarles, 13 Idaho 252, 89 P. 636 (1907).

To compel clerk of district court to enter judgment. Oliver v. Kootenai County, 13 Idaho 281, 90 P. 107 (1907); Santti v. Hartman, 29 Idaho 490, 161 P. 249 (1916).

To compel court to act where it has jurisdiction. Connolly v. Woods, 13 Idaho 591, 92 P. 573 (1907); St. Michaels Monastery v. Steele, 30 Idaho 609, 167 P. 349 (1917).

Against public service water company to regulate charges and rates. Hatch v. Consumers' Co., 17 Idaho 204, 104 P. 670 (1909), aff'd, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

To compel a Carey Act company to sell a water right. State v. Twin Falls Canal Co., 21 Idaho 410, 121 P. 1039 (1911), error dismissed, 235 U.S. 690, 35 S. Ct. 205, 59 L. Ed. 427 (1914).

To compel public officers to perform their official duties, though details of such performance are left to their discretion. Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918).

To compel state board of land commissioners to allow an entry on a Carey Act land segregation, by a person possessing statutory qualifications and who has complied with statutory conditions precedent. Furbee v. Alexander, 31 Idaho 738, 176 P. 97 (1918).

To compel a disqualified judge to grant a change of venue. Newman v. District Court, 32 Idaho 607, 186 P. 922 (1920).

To compel state board of land commissioners to put up at public auction lands for lease to the highest bidder. East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs, 34 Idaho 807, 198 P. 760 (1921).

To compel trustees of common school district to return to the place where it was lawfully established a school unlawfully moved without authority from people of district. People ex rel. Thompson v. Cothern, 36 Idaho 340, 210 P. 1000 (1922).

To compel hearing of one imprisoned for contempt in not paying alimony as ordered, but petitioner's right must be clear and his application for hearing made in compliance with statute. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

To compel issuance of stock certificates, but no one is entitled to the writ whose right is not clear and unquestionable. Savic v. Kramlich, 52 Idaho 156, 12 P.2d 260 (1932).

To compel state fish and game warden to certify claim of employee of his department for salary due and payable to such employee. Doolittle v. Eckert, 53 Idaho 384, 24 P.2d 36 (1933).

To compel state treasurer to pay a warrant issued by state auditor against the Idaho fruit and vegetable advertising and development fund. State ex rel. Graham v. Enking, 59 Idaho 321, 82 P.2d 649 (1938).

To compel a reassessment to take care of the inadequacy of the assessment roll and failure to make annual levies for payment of interest on special or local improvement bonds. Maguire v. Whillock, 63 Idaho 630, 124 P.2d 248 (1942).

To test jurisdiction of trial court. State v. Winstead, 66 Idaho 504, 162 P.2d 894 (1945).

Where under the facts the granting of the bank charter by defendant commissioner was purely a ministerial act, the writ of mandamus would be properly issued, defendant having determined that banking corporators had complied with all statutory provisions required to entitle such bank to engage in banking, stockholders and officers were of such character and general fitness as to command confidence in the community, the additional bank was justified in that area, such bank was entitled lawfully to commence business in the community, and stockholders would command confidence in the community. Leuhrs v. Spaulding, 80 Idaho 326, 328 P.2d 582 (1958).

Writ of mandamus will issue to compel state board of examiners to allow a claim. Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

Where the record indicated that a landowner possessed all the qualifications, and none of the disqualifications, set by statute and ordinance as prerequisites for the issuance of a license to operate a beer tavern, the

city council had no discretion to deny him a license; its duty to issue the license was merely ministerial, and the district court, therefore, erred in not issuing its writ of mandate to compel the city council to perform this duty. Mickelsen v. City of Rexburg, 101 Idaho 305, 612 P.2d 542 (1980).

A writ of mandate would issue to compel a district judge to credit defendant's presentence confinement against his five-year prison sentence. Law v. Rasmussen, 104 Idaho 455, 660 P.2d 67 (1983).

The issuance of the writ is discretionary and not a matter of right and it is used only to compel performance of a clear legal duty, i.e., ministerial duty which does not involve the exercise of discretion. Mitchell v. Agents of State, 105 Idaho 419, 670 P.2d 520 (1983).

A writ of mandate will issue to any party who has a clear legal right to have an act performed if the officer against whom the writ is sought has a clear duty to act and if the act sought to be compelled is ministerial in nature and does not require an exercise of discretion. Dalton v. Idaho Dairy Prods. Comm'n, 107 Idaho 6, 684 P.2d 983 (1984).

The mere act of turning over public documents for inspection is purely ministerial in nature, involving no exercise of discretion by the officer or agency charged with its execution; thus, mandamus is indeed the correct remedy for a person requesting such an inspection to seek and mandamus must issue if the document at issue is in fact a public record. Dalton v. Idaho Dairy Prods. Comm'n, 107 Idaho 6, 684 P.2d 983 (1984).

Mandamus will lie if the officer against whom the writ is brought has a clear legal duty to perform the desired act, and if the act sought to be compelled is ministerial or executive in nature; thus, mandamus was a proper remedy to compel the mayor of a city to execute a public contract, since the signing of public contracts is authorized by § 50-607. Utah Power & Light Co. v. Campbell, 108 Idaho 950, 703 P.2d 714 (1985).

When Not Issued.

Writ of mandate will not issue:

To make up or alter records of proceedings of legislative bodies, by operating upon officers of such bodies. Clough v. Curtis, 134 U.S. 361, 10 S. Ct. 573, 33 L. Ed. 945 (1890).

To inquire into acts of a state legislative body where necessary to determine the question upon verbal testimony, and where the act has for its object correction of the record of the legislature; neither will the act lie to supply the record where none was made, for the legislative journal can be corrected only by the body that made it, not by the courts on a writ of mandamus. Burkhart v. Reed, 2 Idaho 503, 22 P. 1 (1889), aff'd, Clough v. Curtis, 134 U.S. 361, 10 S. Ct. 573, 33 L. Ed. 945 (1890).

To direct a state board to allow claim which it has rejected and had authority so to do. Payne v. State Bd. of Wagonroad Comm'rs, 4 Idaho 384, 39 P. 548 (1895).

To compel county auditor to draw his warrant for a claim prior to allowance thereof by board of commissioners. Jolly v. Woodward, 4 Idaho 496, 42 P. 512 (1895).

To compel county commissioners to act on a claim against county. Wright v. Kelley, 4 Idaho 624, 43 P. 565 (1895).

To compel issuance of an order to show cause why decedent's real estate should not be sold to pay debts. State ex rel. Missoula Mercantile Co. v. Whelan, 6 Idaho 78, 53 P. 2 (1898).

To compel a railroad to permit a telephone company to install instruments in railroad depots. Idaho Indep. Tel. Co. v. Oregon Short Line R.R., 8 Idaho 175, 67 P. 318 (1901).

To review an order of district court quashing a jury panel when such order is made in excess of jurisdiction of court. Heitman v. Morgan, 10 Idaho 562, 79 P. 225 (1905).

To require a trial judge to proceed with a term of court in one county where it is shown that a regular term for another county convenes immediately after date set for hearing of application for writ. Heitman v. Morgan, 10 Idaho 562, 79 P. 225 (1905).

To correct an order of court in passing on motion to strike out portion of pleading, where court is acting within its jurisdiction. Connolly v. Woods, 13 Idaho 591, 92 P. 573 (1907).

To compel commission of a crime. Crescent Brewing Co. v. Oregon Short Line R.R., 24 Idaho 106, 132 P. 975 (1913).

To litigate or determine a permanent or perpetual water right. Lewis v. Mountain Home Coop. Irrigation Co., 28 Idaho 682, 156 P. 419 (1916).

To compel holding of an election. Perrault v. Robinson, 29 Idaho 267, 158 P. 1074 (1916). See City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display), 143 Idaho 254, 141 P.3d 1123 (2006).

To punish for contempt, officer using his best and honest judgment. Potlatch Lumber Co. v. Board of County Comm'rs, 29 Idaho 516, 160 P. 260 (1916).

To compel a Carey Act construction company to issue shares of stock to a purchaser of state school land where shares of stock already sold are far in excess of available water supply, and contract between construction company and state was entered into under a mutual mistake of a material fact. State v. Twin Falls-Salmon River Land & Water Co., 30 Idaho 41, 166 P. 220 (1916).

To control discretion or direct decision of inferior court. St. Michaels Monastery v. Steele, 30 Idaho 609, 167 P. 349 (1917).

To compel an officer to perform his duties generally. Evans v. Van Deusen, 31 Idaho 614, 174 P. 122 (1918).

To compel the clerks of school districts to collect from teachers therein the amount prescribed under a statute respecting annuities or teachers' retirement fund. State v. Kingsley, 35 Idaho 262, 205 P. 892 (1922).

To compel a delivery of water by an irrigation district to the water users, when the district is without funds or the necessary credit to pay for the delivery of water. Cowan v. Lineberger, 35 Idaho 403, 206 P. 805 (1922).

To compel the performance of an act which would result injuriously to a third party, as where it is sought to compel the delivery of water by Carey Act project when the water could only be delivered by taking it from another, since the project had no surplus water. Boley v. Twin Falls Canal Co., 37 Idaho 318, 217 P. 258 (1923).

To control discretion of district court with respect to certification of reporter's transcript. Aker v. Aker, 51 Idaho 555, 8 P.2d 777 (1932).

The action of the trial judge in denying plaintiff's motion for stay of proceedings in proceeding involving custody of children falls clearly within the exercise of the lawful discretion of the trial judge, and such discretion cannot be coerced or controlled by mandamus. Freeman v. McQuade, 80 Idaho 387, 331 P.2d 263 (1958).

Mandamus will not lie unless party seeking it has a clear legal right to have the act done for which he seeks the writ; and, unless it is the clear legal duty of the officer to act, it will not lie to coerce or control discretion of the officer. Allen v. Smylie, 92 Idaho 846, 452 P.2d 343 (1969).

Where writ of mandate was sought to compel municipal officers to declare and certify passage of bond issue on ground that a two third (2/3) affirmative vote requirement was unconstitutional and that a majority of votes cast were for passage, there was no clear statutory or constitutional duty demanded of such officers as would have been required for such a mandate; in fact, the opposite was true. Bogert v. Kinzer, 93 Idaho 515, 465 P.2d 639 (1970), appeal dismissed, 403 U.S. 914, 91 S. Ct. 2224, 29 L. Ed. 2d 691 (1971).

A writ of mandate will not lie under this section to control discretionary acts of courts acting within their jurisdiction. Felton v. Prather, 95 Idaho 280, 506 P.2d 1353 (1973).

As § 67-6519 gives counties the discretion to grant or deny any application for a permit authorized or mandated by the Local Planning Act of 1975, a writ of mandate is not available to compel the issuance of such a permit. McCuskey v. Canyon County, 123 Idaho 657, 851 P.2d 953 (1993); Brady v. City of Homedale, 130 Idaho 569, 944 P.2d 704 (1997).

Cited Carson v. Thews, 2 Idaho 162, 9 P. 605 (1886); Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934); Kaseris v. Justice Court, 65 Idaho 347, 144 P.2d 469 (1943); Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962); Rufener v. Shaud, 98 Idaho 823, 573 P.2d 142 (1977); Wyckoff v. Board of County Comm'rs, 101 Idaho 12, 607 P.2d 1066 (1980); State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007); Leavitt v. Craven, 154 Idaho 661, 302 P.3d 1 (2012); Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus), 161 Idaho 508, 387 P.3d 761 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Mandamus, § 1 et seq.

C.J.S. — 55 C.J.S., Mandamus, § 1 et seq.

ALR. — Summary judgment in mandamus or prohibition cases. 3 A.L.R.3d 675.

Judgment granting or denying writ of mandamus or prohibition as res judicata. 21 A.L.R.3d 206.

Right or duty to refuse telephone, telegraph, or other wire service in aid of illegal gambling operations. 30 A.L.R.3d 1143.

Mandamus to compel disciplinary investigation or action against physician or attorney. 33 A.L.R.3d 1429.

Mandamus to compel zoning officials to cancel permit granted in violation of zoning regulation. 68 A.L.R.3d 166.

Rights and remedies of parents inter se with respect to the names of their children. 40 A.L.R.5th 697.

Allowance of Attorneys' fees in mandamus proceedings. 34 A.L.R.4th 457.

Mandamus as remedy to compel disqualification of federal judge. 56 A.L.R. Fed. 494.

§ 7-303. Absence of adequate remedy. — The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

History.

C.C.P. 1881, § 739; R.S., R.C., & C.L., § 4978; C.S., § 7255; I.C.A., § 13-303.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Adequacy of remedy.

Discretion of court.

Individual or official capacity.

Jurisdiction sole question.

Standard of review.

Adequacy of Remedy.

Court, in a case that does not involve private rights of litigants, cannot be required to determine whether or not particular bodies of persons constituted a lawful legislative assembly. Clough v. Curtis, 134 U.S. 361, 10 S. Ct. 573, 33 L. Ed. 945 (1890).

Where appeal is given by law and such appeal is not a plain, speedy, and adequate remedy in due course of law, resort may be had to mandamus. Fenton v. Board of Comm'rs, 20 Idaho 392, 119 P. 41 (1911).

While the court calendar may be congested, court cannot take into consideration the annoyance, expense, or delay incident to prosecution of the usual remedies provided by law in determining whether or not writ of mandamus or prohibition should issue. Blackwell Lumber Co. v. Flynn, 27 Idaho 632, 150 P. 42 (1915).

Writ of mandate is not available to party having remedy by appeal. St. Michaels Monastery v. Steele, 30 Idaho 609, 167 P. 349 (1916); Berding v. Varian, 34 Idaho 587, 202 P. 567 (1921).

Existence of adequate remedy in the ordinary course of law, either legal or equitable in its nature, will prevent issuance of writ. Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918).

A writ of mandate, rather than claim and delivery, was the proper remedy to require defendants to return books and records to plaintiff corporations, since under former law defendant could have posted a redelivery bond and retained possession of the books and records, perhaps defeating furtherance of business of plaintiff corporations; additionally, where a writ of mandamus directs the restitution of property by corporate officer as performance of his duty, it is not necessary to describe such property with the particularity required in a replevin proceeding. Silver Bowl, Inc. v. Equity Metals, Inc., 93 Idaho 487, 464 P.2d 926 (1970).

An action in mandamus was the proper procedure for corporation to follow in obtaining the return of its corporate books and records from its former legal counsel, bookkeeping corporation, and bookkeeping corporation's president and owner. Nancy Lee Mines, Inc. v. Harrison, 93 Idaho 652, 471 P.2d 39 (1970).

Where county commissioners refused to perform ministerial duty to contribute their share of funds to public health district as required by statute, which would diminish ability of public health district to furnish services and reduce its matching funds from state, writ of mandate was properly issued to require commissioners to appropriate and pay required sum, since the public health district had no speedy or adequate remedy in the ordinary course of law. District Bd. of Health v. Chancey, 94 Idaho 944, 500 P.2d 845 (1972).

Where a criminal case was dismissed and refiled, no writ of mandamus to require the judge to dismiss the case or reassign it to the original magistrate would issue since defendants were not precluded from their normal right to appeal and would not be subjected to any hardships exceeding those ordinarily borne by a defendant in a criminal prosecution. Rufener v. Shaud, 98 Idaho 823, 573 P.2d 142 (1977).

The legislature did not intend the requirement of the general writ of mandate statute that there be no "plain, speedy and adequate remedy in the ordinary course of law" to apply to the use of the writ under § 63-3030A to compel the filing of tax returns. Mitchell v. Agents of State, 105 Idaho 419, 670 P.2d 520 (1983).

Where an agency petitioned for a writ of mandamus to require agency officials to sign a resolution for the issuance of certain bonds, and to proceed to publish notice and execute the bonds, since the agency had available to it other adequate remedies at law and sufficient time within which to pursue those remedies, all mandamus relief requested by the agency could have been accomplished at the district court level by a declaratory judgment action or in other proceedings, and the petition for issuance of a writ of mandamus was denied. Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

Where an agency simply alleged in its verified petition for a writ of mandamus that, if agency officials do not sign a resolution for the issuance of certain bonds and proceed to publish notice and execute the bonds, the urban renewal project to be funded by such bonds cannot be completed, and that the will of the citizens would be thwarted, and there was no proof to support the agency's assertion that it had no other plain, speedy or adequate remedy, the agency failed to prove that a writ of mandamus was its only adequate remedy under the circumstances; the law requires more than conclusions and allegations to warrant the issuance of such a writ, and the petition for issuance of a writ of mandamus was denied. Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

Summary judgment for respondent was proper where plaintiff failed to state a claim, and any procedural issues related to plaintiff's DUI trial were not an appropriate basis for writs because plaintiff had an adequate remedy

at law — a direct appeal. Ackerman v. Bonneville County, 140 Idaho 307, 92 P.3d 557 (Ct. App. 2004).

Discretion of Court.

In answer to respondents' contention that since they had no plain, speedy or adequate remedy at law, a writ of mandate must issue, the court set forth that it had repeatedly held that mandamus is not a writ of right and that the allowance or refusal of such writ is a matter of discretion with the court before whom the application for it is heard. Hunke v. Foote, 84 Idaho 391, 373 P.2d 322 (1962).

Individual or Official Capacity.

If a citizen has a right to a writ of mandamus to compel a public officer to perform a statutory public duty and a concurrent right of action against a private individual, even if it would in a measure redress the private injury to himself, he is entitled to resort to mandamus. Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918).

Jurisdiction Sole Question.

Mandamus cannot be used to correct an order of the court in passing upon motions during the progress of the proceeding, provided the court is acting within its jurisdiction in passing upon the same. Connolly v. Woods, 13 Idaho 591, 92 P. 573 (1907).

Standard of Review.

The standard of review in a request for writ of mandate to compel reinstatement following a teacher termination by a school board is limited to an examination of whether the party seeking the writ has a clear legal right to have an act performed, and whether the action basically is ministerial, not discretionary; if it is discretionary, mandamus will not lie unless it clearly appears that the board has acted arbitrarily, unjustly and in abuse of its discretion and there is not available any other plain, speedy and adequate remedy in the ordinary course of law. Kolp v. Board of Trustees, 102 Idaho 320, 629 P.2d 1153 (1981).

Cited Pyke v. Steunenberg, 5 Idaho 614, 51 P. 614 (1897); State ex rel. Missoula Mercantile Co. v. Whelan, 6 Idaho 78, 53 P. 2 (1898); Newman v. District Court, 32 Idaho 607, 186 P. 922 (1920); Malloy v. Keel, 43 Idaho

211, 250 P. 389 (1926); Aker v. Aker, 51 Idaho 555, 8 P.2d 777 (1932); State ex rel. Graham v. Enking, 59 Idaho 321, 82 P.2d 649 (1938); Winans v. Swisher, 68 Idaho 364, 195 P.2d 357 (1948); Allen v. Smylie, 92 Idaho 846, 452 P.2d 343 (1969); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990); Cowles Publishing Co. v. Magistrate Court of First Judicial Dist., 118 Idaho 753, 800 P.2d 640 (1990); Almgren v. Idaho Dep't of Lands, 136 Idaho 180, 30 P.3d 958 (2001); Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus), 161 Idaho 508, 387 P.3d 761 (2015); Westover v. Cundick, 161 Idaho 933, 393 P.3d 593 (2017).

§ 7-304. Form of writ. — The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place why he has not done so. The peremptory writ must be in a similar form except that the words requiring the party to show cause why he has not done as commanded must be omitted, and a return day inserted.

History.

C.C.P. 1881, § 740; R.S., R.C., & C.L., § 4979; C.S., § 7256; I.C.A., § 13-304.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

To Whom Writ Directed.

In an action for writ of mandamus to require the enforcement of an ordinance, for example, one prescribing fire limitations and providing for the demolishing of buildings erected in the violation thereof, members of the board of trustees or governing council of a municipality are the proper parties to whom the writ should be directed. Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918).

§ 7-305. Notice of application — Hearing. — When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, must be at least fourteen (14) days. The writ cannot be granted by default. The case must be heard by the court whether the adverse party appear or not.

History.

C.C.P. 1881, § 741; R.S., R.C., & C.L., § 4980; C.S., § 7257; I.C.A., § 13-305; am. 1996, ch. 224, § 2, p. 736.

STATUTORY NOTES

Cross References.

Special writs, Idaho App. R. 5.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

When Peremptory Writ Issues.

Peremptory writ of mandate will issue in the first instance to require trial court to try cause in conformity with prior opinion rendered in said cause by supreme court. Kroetch v. Morgan, 10 Idaho 172, 77 P. 19 (1904).

Cited Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952).

§ 7-306. Answer. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 742; R.S., R.C., & C.L., § 4981; C.S., § 7258; I.C.A., § 13-306, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 74(c).

§ 7-307. Trial by jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 743; R.S., R.C., & C.L., § 4982; C.S., § 7259; I.C.A., § 13-307, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 74(d).

§ 7-308. Objections to answer. — On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

History.

C.C.P. 1881, § 744; R.S., R.C., & C.L., § 4983; C.S., § 7260; I.C.A., § 13-308.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

§ 7-309. Motion for new trial. — The motion for a new trial must be made in the court in which the issue of fact is tried.

History.

C.C.P. 1881, § 745; R.S., R.C., & C.L., § 4984; C.S., § 7261; I.C.A., § 13-309.

STATUTORY NOTES

Cross References.

New trial, general rules applicable, Idaho Civil Procedure Rules 59(a) through 59(e).

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Supreme Court.

Motion for new trial is not proper proceeding in supreme court to obtain a rehearing on issues of law when said court is proceeding under its original jurisdiction. People ex rel. Lincoln County v. George, 3 Idaho 108, 27 P. 680 (1891).

§ 7-310. Certification of verdict — Argument. — If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five (5) days after the rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

History.

C.C.P. 1881, § 746; R.S., R.C., & C.L., § 4985; C.S., § 7262; I.C.A., § 13-310.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

§ 7-311. Trial on pleadings. — If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing, the argument of the case.

History.

C.C.P. 1881, § 747; R.S., R.C., & C.L., § 4986; C.S., § 7263; I.C.A., § 13-311.

§ 7-312. Damages. — If judgment be given for the applicant, he may recover damages which he has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

History.

C.C.P. 1881, § 748; R.S., R.C., & C.L., § 4987; C.S., § 7264; I.C.A., § 13-312.

STATUTORY NOTES

Cross References.

Execution generally, § 11-101 et seq.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Consolidation of claims.

Costs.

Liability for damages.

Consolidation of Claims.

Although a litigant may combine a claim for damages with a petition for a writ of mandamus, it is not mandatory that the damage and mandamus proceedings be consolidated. Heaney v. Board of Trustees, 98 Idaho 900, 575 P.2d 498 (1978).

Costs.

In finding in favor of taxpayer in application for writ of prohibition against state tax commission, taxpayer was entitled to recover costs against commission, since costs are recoverable under writ of mandate under this section. Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952).

Liability for Damages.

Judge against whom writ of mandate is granted by supreme court, because of error he made in a matter pending before him, is not liable to injured party for damages. Hill v. Morgan, 9 Idaho 777, 76 P. 765 (1904).

Water user under irrigation project may recover damages for expenses of employing writ against water master in order to compel him to furnish legal supply of water, but right to such damages cannot be litigated in collateral action. Carter v. Niday, 46 Idaho 505, 269 P. 91 (1928).

Cited Aero Serv. Corp. W. v. Benson, 84 Idaho 416, 374 P.2d 277 (1962).

§ 7-313. Service of writ. — The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

History.

C.C.P. 1881, § 749; R.S., R.C., & C.L., § 4988; C.S., § 7265; I.C.A., § 13-313.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

The subject matter of this section appears to at least in part have been abrogated, affected or covered by Idaho R. Civ. P. 4(d).

§ 7-314. Disobedience of writ — Penalty. — When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

History.

C.C.P. 1881, § 750; R.S., R.C., & C.L., § 4989; C.S., § 7266; I.C.A., § 13-314.

STATUTORY NOTES

Cross References.

Disposition of fines, § 19-4705.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Imprisonment.

It is not contemplated that the extreme sanction of imprisonment be imposed unless the duty is clear and the writ is specific in its directions as to the duty to be performed. Mitchell v. Agents of State, 105 Idaho 419, 670 P.2d 520 (1983).

The application for writ of habeas corpus did not show the petitioner to be unlawfully imprisoned or restrained in light of the established facts that

he failed to file a tax return containing the required verification or certification and such failure to file a return with a proper verification or certification constituted a refusal and failure to obey a writ of mandate without just excuse and justified his imprisonment pursuant to this section until the writ was obeyed; accordingly, the application for a writ of habeas corpus would be denied. Mitchell v. Agents of State, 105 Idaho 419, 670 P.2d 520 (1983).

Cited Hill v. Morgan, 9 Idaho 777, 76 P. 765 (1904); Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952).

Chapter 4
WRITS OF PROHIBITION

Sec.

7-401. Definition.

7-402. When and how issued.

7-403. Alternative and peremptory writs.

7-404. Application of mandamus procedure.

§ 7-401. Definition. — The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

History.

C.C.P. 1881, § 751; R.S., R.C., & C.L., § 4994; C.S., § 7267; I.C.A., § 13-401.

STATUTORY NOTES

Cross References.

Abbreviations and numbers, use in pleadings, Idaho R. Civ. P. 10(a)(3).

Costs, Idaho R. Civ. P. 54(d)(1) to 54(d)(7).

Court seal to be affixed to writs, § 1-1616.

Fee of clerk of supreme court upon filing application for writ, § 1-402.

New trials, Idaho R. Civ. P. 59(a) through 59(e).

Proceedings to be in English language, Idaho R. Civ. P. 10(a)(3).

Special writs, Idaho App. R. 5.

Statute of limitations, application to special proceedings of a civil nature, § 5-240.

Successive applications for writs, Idaho R. Civ. P. 11(a)(2).

CASE NOTES

Alternative remedy available.

Boards and commissions.

Costs.

"Counterpart" construed.

Executive department.

Extent of inquiry.

Jurisdiction.

Nature of writ.

Standard of review.

When issued.

When not issued.

Alternative Remedy Available.

The extraordinary writs of prohibition and mandamus are not available where an adequate remedy exists in the ordinary course of law, either legal or equitable, and in this case lowest bid public works contractor had the remedies of the Uniform Declaratory Judgment Act, § 10-1201 et seq. available; therefore, the writ of prohibition was vacated. Agricultural Servs., Inc. v. City of Gooding, 120 Idaho 627, 818 P.2d 331 (Ct. App. 1991).

Summary judgment for respondent was proper where plaintiff failed to state a claim, and any procedural issues related to plaintiff's DUI trial were not an appropriate basis for writs because plaintiff had an adequate remedy at law — a direct appeal. Ackerman v. Bonneville County, 140 Idaho 307, 92 P.3d 557 (Ct. App. 2004).

Boards and Commissions.

Prohibition is inapplicable to control administrative or ministerial acts of boards, commissions and public officers; yet, when such agency is acting in a judicial or even quasi-judicial capacity and exceeds its jurisdiction, the writ will lie to curb operation without the ambit of lawful jurisdiction. Bragaw v. Gooding, 14 Idaho 288, 94 P. 438 (1908), overruled in part, Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

Costs.

In finding in favor of taxpayer in application for writ of prohibition against state tax commission, taxpayer was entitled to recover costs against commission, since costs are recoverable under § 7-404. Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952).

"Counterpart" Construed.

The word "counterpart" cannot be given the meaning of the exact reverse or opposite without doing away with the limitation in the second clause whereby prohibition is confined to the cases in which the court, corporation, officer or person has already exceeded the powers conferred by law; it is used in the more general sense that prohibition arrests while mandamus commands action. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

Executive Department.

Under the Idaho constitution and form of government, which recognizes the independence of the three distinct departments of government, the judicial department cannot prohibit the executive department from acting within the recognized scope of authority of that branch of the government. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

Extent of Inquiry.

This section limits supreme court's inquiry in an application under it to a determination of whether the district court is acting within the jurisdiction conferred upon it by law, where it appears that the district court had jurisdiction of the parties and of the subject-matter in a suit to foreclose a chattel mortgage; and in such case it did not exceed its jurisdiction in appointing a receiver and ordering sale of the mortgaged property. Skeen v. District Court, 29 Idaho 331, 158 P. 1072 (1916).

In an original proceeding in supreme court to prohibit trial judge from exceeding his powers in divorce action, order for alimony and suit money cannot be made. Callahan v. Dunn, 30 Idaho 225, 164 P. 356 (1917).

Court will take judicial notice of expiration of term of district judge and refuse to issue writ when he is no longer in office. Boise-Kuna Irrigation Dist. v. Hartson, 48 Idaho 572, 285 P. 456 (1929).

Jurisdiction.

"Jurisdiction," as used in this section, means right to hear and determine a matter and carries with it the idea of exercising judicial or quasi-judicial functions. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

The original jurisdiction of the supreme court is fixed by the constitution and cannot be broadened or extended by the legislature. Neil v. Public Utils.

Comm'n, 32 Idaho 44, 178 P. 271 (1919).

The district court only has the authority to issue a writ of prohibition against the director of the department of water resources if the director was without, or in excess of, his jurisdiction. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Where the only remaining actions to be taken on a tax roll were within the jurisdiction of a board of equalization, no writ of prohibition would be issued to prevent such actions. Clark v. Ada County Bd. of Comm'rs, 98 Idaho 749, 572 P.2d 501 (1977).

The word "jurisdiction," in the context of the statute defining the writ of prohibition, pertains to the exercise of judicial or quasi-judicial functions. Crane Creek Country Club v. City of Boise, 121 Idaho 485, 826 P.2d 446 (1990).

Nature of Writ.

A writ of prohibition to prevent proceedings before a district court or the judge thereof will not be issued in any case unless it is so clear that such court or judge is acting outside of or beyond its or his jurisdiction that there is no reasonable doubt. In re Miller, 4 Idaho 711, 43 P. 870 (1896).

Writ of prohibition is extraordinary remedy which is sometimes granted, not as matter of right but in sound discretion of court, to restrain inferior tribunal from exceeding its jurisdiction; where inferior court has jurisdiction expressly conferred upon it by statute, supreme court will not presume in advance that such court will exceed its jurisdiction. Since it is an extraordinary writ, it will not issue in doubtful cases, nor in any case where a plain, speedy, and adequate remedy of law exists. And where it appears that the act sought to be prohibited may speedily be reviewed in supreme court by appeal from order of inferior tribunal, or if appeal will not lie then upon writ of error or certiorari, writ of prohibition will not issue. Rust v. Stewart, 7 Idaho 558, 64 P. 222 (1901).

Writ of prohibition as authorized by the constitution and laws of this state is the writ as known and recognized at common law. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

The writ of prohibition will not issue to restrain purely ministerial acts. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904); Taylor v. Girard, 54 Idaho

787, 36 P.2d 773 (1934).

This section must be construed with § 7-402, and, when so construed, it is clear that two contingencies must arise before writ of prohibition will issue, namely, that the tribunal, corporation, board, or person is proceeding without or in excess of jurisdiction of such tribunal, corporation, board or person, and that there is not a plain, speedy, and adequate remedy of law. Olden v. Paxton, 27 Idaho 597, 150 P. 40 (1915); Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934); Roark v. Koelsch, 62 Idaho 626, 115 P.2d 95 (1941).

It is no part of the office of a writ of prohibition to perform the true function of appeal; it does not concern itself with the correction of errors or irregularities of a tribunal so long as that tribunal is acting within its lawful jurisdiction, although it may be improperly exercising such jurisdiction; and when the inquiry is made and answered as to whether or not an inferior court or tribunal has jurisdiction of the subject-matter and of the person, the true function of a writ has been performed. Gropp v. Huyette, 35 Idaho 683, 208 P. 848 (1922).

Writ of prohibition is used to arrest proceedings involving lack of or excess of jurisdiction and not to attack errors committed in exercise of jurisdiction. Gasper v. District Court, 74 Idaho 388, 264 P.2d 679 (1953).

A writ of prohibition may be granted if the proceedings of the court are without or in excess of its jurisdiction. Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955).

A special prosecuting attorney did not become a party to civil action involving party seeking discovery by petitioning district court for protective order to prevent inquiry into certain aspects of criminal investigation during taking of depositions; therefore, a writ of prohibition rather than an appeal was the proper remedy to prevent enforcement of district court's assessment of discovery costs against special prosecuting attorney. Frost v. Hofmeister, 97 Idaho 757, 554 P.2d 935 (1976).

The writ of prohibition serves a fundamental but narrow purpose of determining whether a body whose action is challenged was attempting to act without or in excess of its jurisdiction. Clark v. Meehl, 98 Idaho 641, 570 P.2d 1331 (1977).

A writ of prohibition was not an available means of relief for property owners against a hospital district for levying taxes. Idaho County Property Owners Ass'n v. Syringa Gen. Hosp. Dist., 119 Idaho 309, 805 P.2d 1233 (1991).

Standard of Review.

The standard of review for an appeal of the dismissal of a petition for writ of prohibition is the same as the summary judgment standard. All facts and inferences from the record will be viewed in favor of the nonmoving party to determine whether the motion should be granted. Rim View Trout Co. v. Idaho Dep't of Water Resources, 119 Idaho 676, 809 P.2d 1155 (1991).

When Issued.

Writ of prohibition will issue:

Whenever proper facts are shown for its issuance, even though there be an appeal, if such appeal is not a plain, speedy and adequate remedy in the ordinary course of law. Cronan v. District Court, 15 Idaho 184, 96 P. 768 (1908).

Against state board of land commissioners, as such, even though the governor is member of board. Balderston v. Brady, 17 Idaho 567, 107 P. 493 (1910).

To restrain county commissioners from proceeding in cases without or in excess of their jurisdiction. Baker v. Gooding County, 25 Idaho 506, 138 P. 342 (1914).

To prohibit holding of an illegal, unauthorized, invalid election. Perrault v. Robinson, 29 Idaho 267, 158 P. 1074 (1916). See City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display), 143 Idaho 254, 141 P.3d 1123 (2006).

Where judge is about to proceed in case in disregard of intention of statute, exercise of sound discretion requires granting of writ. Spivey v. District Court, 37 Idaho 774, 219 P. 203 (1923).

To restrain issuance of injunction when lower court acts in excess of its jurisdiction. Evans v. District Court, 47 Idaho 267, 275 P. 99 (1929).

Where the judge refuses to recognize his recusation. Anderson v. Winstead, 65 Idaho 161, 140 P.2d 233 (1943).

Before a writ of prohibition will issue to an inferior court, it must appear both that the inferior court is proceeding without or in excess of its jurisdiction and that there is not a plain, speedy and adequate remedy in the ordinary course of law. Smith v. Young, 71 Idaho 31, 225 P.2d 466 (1950); Freiburghaus v. Freiburghaus, 100 Idaho 730, 604 P.2d 1209 (1980).

A writ of prohibition may be granted if the proceedings of the court are without or in excess of its jurisdiction. Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955).

Supreme court has jurisdiction to issue extraordinary writs in aid of its appellate jurisdiction, and a writ of prohibition is available to arrest the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. Coeur d'Alene Turf Club, Inc. v. Cogswell, 93 Idaho 324, 461 P.2d 107 (1969).

When Not Issued.

Writ of prohibition will not issue:

To restrain district court from proceeding to try cross-complaint, demurrer to which has been overruled. Willman v. District Court, 4 Idaho 11, 35 P. 692 (1894).

To restrain an act which has been performed. Bellevue Water Co. v. Stockslager, 4 Idaho 636, 43 P. 568 (1895).

To prevent further proceedings before district court, unless it is claimed that that court is acting outside of its jurisdiction, and there is no reasonable doubt of the fact. In re Miller, 4 Idaho 711, 43 P. 870 (1896).

To restrain purely ministerial acts. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904); Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934).

To restrain district court from hearing an appeal from probate court in probate matters. Fraser v. Davis, 29 Idaho 70, 156 P. 913, 158 P. 233 (1916).

To restrain district court from appointing receiver in foreclosing a chattel mortgage; only question is whether district court is acting within jurisdiction. Skeen v. District Court, 29 Idaho 331, 158 P. 1072 (1916).

To restrain public utilities commission from proceeding with hearing of order to show cause in matter relating to regulation of rates. Natatorium Co. v. Erb, 34 Idaho 209, 200 P. 348 (1921).

To determine whether court reporter copied and certified papers not introduced in evidence in case pending on appeal. Evans v. District Court, 50 Idaho 60, 293 P. 323 (1930).

To restrain county board of equalization from assessing, levying or equalizing any tax on the shares of capital stock of a state bank. State ex rel. Bank of Eagle v. Leonardson, 51 Idaho 646, 9 P.2d 1028 (1932).

To prevent the secretary of state from performing a clerical or ministerial act which the law makes it his duty to perform. Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934).

To review, under the statute making a homestead subject to execution in satisfaction of a judgment obtained on a debt secured by a materialman's lien, decree of foreclosure of such lien and order issuing a writ of assistance directing the sheriff to place the holder of sheriff's deed in possession. Roark v. Koelsch, 62 Idaho 626, 115 P.2d 95 (1941).

An application for a writ of prohibition to prohibit a special judge from further enforcing a receivership, after he had denied a motion to discharge the receiver, will be denied where the judge had jurisdiction of the subject matter and the person. Murphy v. McCarty, 69 Idaho 193, 204 P.2d 1014 (1949).

In proceedings supplemental to execution by judgment creditors in a justice of peace court wherein judgment creditors summoned in third party relative to certain property allegedly belonging to judgment debtor and in the possession of the third party, and the third party claimed the property belonged to it, the justice did not abuse his discretion by continuing the hearing and ordering the third party to bring in books and records, hence district court had no right to issue writ of prohibition restraining further action by justice. Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955).

The district court acted within its jurisdiction in finding divorced wife in contempt for refusing her divorced husband his reasonable child visitation rights, so that writ of prohibition was improperly sought, improvidently issued and was quashed since such a writ is to issue only when a court acts in excess of its jurisdiction and no other adequate remedy exists. Dey v. Cunningham, 93 Idaho 684, 471 P.2d 71 (1970).

Where a party seeking discovery moved the district court to assess discovery costs against special prosecutor, who had petitioned the district court for protective order to prevent inquiry into certain aspects of criminal investigation, a writ of prohibition would not be issued against the party seeking discovery who exercised no judicial or quasi-judicial power but who was merely a private citizen attempting to use the courts. Frost v. Hofmeister, 97 Idaho 757, 554 P.2d 935 (1976).

Where a complaint filed by a person other than the county prosecutor was nonetheless sufficient to institute a criminal action for forgery and to confer jurisdiction on the magistrate, a writ of prohibition was properly quashed. Clark v. Meehl, 98 Idaho 641, 570 P.2d 1331 (1977).

Where a criminal case was dismissed and refiled, no writ of prohibition would issue to require the trial judge to dismiss the case or reassign it to the original magistrate since the magistrate clearly had jurisdiction of the case. Rufener v. Shaud, 98 Idaho 823, 573 P.2d 142 (1977).

Since by virtue of § 1-2210, and Idaho R. Civ. P. 82(c)(2) and a rule of the third judicial circuit, lawyer magistrate had subject matter jurisdiction in divorce action, where after holding a hearing on the matter he found that a common-law marriage existed and ordered defendant to pay alimony pendente lite and attorney fees, district court erred in issuing writ of prohibition forbidding any further action by the magistrate in the proceedings. Freiburghaus v. Freiburghaus, 100 Idaho 730, 604 P.2d 1209 (1980).

State was not entitled to a writ of prohibition to enjoin a district court from assessing fees for a special master against the state because the appointment of special masters and the assessment of special master costs were matters within the discretion of the district courts. Clear statutory authority existed for the award of such fees, as well direction as to how

costs awarded against the state were to be paid. State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

Cited Gunderson v. District Court, 14 Idaho 478, 94 P. 166 (1908); Little v. Broxon, 31 Idaho 303, 170 P. 918 (1918); Pfirman v. Probate Court of Shoshone County, 57 Idaho 304, 64 P.2d 849 (1937); Kaseris v. Justice Court, 65 Idaho 347, 144 P.2d 469 (1943); Allen v. Smylie, 92 Idaho 846, 452 P.2d 343 (1969); Harrigfeld v. District Court of Seventh Judicial Dist., 95 Idaho 540, 511 P.2d 822 (1973); Sierra Life Ins. Co. v. Granata, 99 Idaho 624, 586 P.2d 1068 (1978); Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983); Crooks v. Maynard, 112 Idaho 312, 732 P.2d 281 (1987); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

§ 7-402. When and how issued. — It may be issued by the supreme court or any district court to an inferior tribunal, or to a corporation, board or person in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

History.

C.C.P. 1881, § 752; R.S., R.C., & C.L., § 4995; C.S., § 7268; I.C.A., § 13-402; am. 1996, ch. 224, § 3, p. 736.

STATUTORY NOTES

Cross References.

Jurisdiction of Supreme Court, Idaho Const., Art. V, § 9; § 1-202.

Nonjudicial days, writs of prohibition may be issued and served on, § 1-1607.

CASE NOTES

Absence of interest.

Adequacy of other remedy.

Basis for issuance.

Discretion of court.

Issuance by Supreme Court.

Issuance error.

Jurisdictional question essential.

Multiplicity of parties and witnesses.

Parties.

Past acts.

Purpose of writ.

Stay of contempt proceedings.

Sufficiency of petition and showing.

Absence of Interest.

Writ of prohibition will not issue to restrain judge from holding court at a certain place, on ground that act purporting to create county of which place is the county seat is unconstitutional, where petitioner has no interest in question of the constitutionality of such act, but his interest depends on his being litigant in case pending in court of such judge, and no reason is apparent from the petition why case in which he is interested cannot as well be tried at place in question as at any other place. Bellevue Water Co. v. Stockslager, 4 Idaho 636, 43 P. 568 (1895).

Adequacy of Other Remedy.

Adequacy of remedy is not to be tested by the convenience or inconvenience of parties to a particular case. Willman v. District Court, 4 Idaho 11, 35 P. 692 (1894); Natatorium Co. v. Erb, 34 Idaho 209, 200 P. 348 (1921).

The supreme court cannot anticipate error or that a trial court, board or commission will exceed its jurisdiction and thereupon take jurisdiction before that court has heard and determined the matter which it has jurisdiction to hear and determine, and where the act sought to be prohibited may speedily be reviewed in the supreme court by appeal from the order of the inferior tribunal, or if an appeal will not lie, then upon a writ of error or certiorari the writ of prohibition will not issue. In re Miller, 4 Idaho 711, 43 P. 870 (1896); Rust v. Stewart, 7 Idaho 558, 64 P. 222 (1901); Olden v. Paxton, 27 Idaho 597, 150 P. 40 (1915); Skeen v. District Court, 29 Idaho 331, 158 P. 1072 (1916); Gropp v. Huyette, 35 Idaho 683, 208 P. 848 (1922).

A writ of prohibition will be issued upon proper complaint or petition to arrest proceedings which are without or in excess of the jurisdiction of a tribunal, corporation, board or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. Cronan v. District Court, 15 Idaho 184, 96 P. 768 (1908); Little v. Broxon, 31 Idaho 303, 170 P. 918 (1918); Evans v. District Court, 47 Idaho 267, 275 P. 99

(1929); State ex rel. Bank of Eagle v. Leonardson, 51 Idaho 646, 9 P.2d 1028 (1932).

Appellate court will not entertain jurisdiction where there is adequate remedy at law, unless record shows that refusal of writ will result in denial of substantial justice. Thompson v. Adair, 36 Idaho 790, 214 P. 214 (1923).

In plain case of district judge permitting motion for new trial to be renewed and reversing his former order, remedy by appeal is neither speedy nor adequate enough to prevent issuance of writ. Spivey v. District Court, 37 Idaho 774, 219 P. 203 (1923).

Appeal from order denying change of venue, where judge is disqualified from sitting on case, does not stay proceedings; in such case writ of prohibition lies to forbid judge sitting on case. Hultner-Wallner v. Featherstone, 48 Idaho 507, 283 P. 42 (1929).

The question of fact as to whether the court reporter has copied and certified as exhibits certain files and papers not introduced in evidence which defendants intended to transmit as exhibits to the supreme court might properly be postponed to be determined on hearing of appeal. Evans v. District Court, 50 Idaho 60, 293 P. 323 (1930).

Prohibition will not lie for the purpose of correcting errors or irregularities committed by an inferior court of probate jurisdiction. Pfirman v. Probate Court of Shoshone County, 57 Idaho 304, 64 P.2d 849 (1937).

Under the statute making a homestead subject to execution in satisfaction of a judgment obtained on a debt secured by a materialman's lien, the court, in decreeing the foreclosure of such lien and in issuing a writ of assistance directing the sheriff to place the holder of sheriff's deed in possession, was not subject to writ of prohibition. Roark v. Koelsch, 62 Idaho 626, 115 P.2d 95 (1941).

Prohibition will not lie to restrain justice court from proceeding with the prosecution of an offense, where defendant's remedy at law by appeal was adequate. Kaseris v. Justice Court, 65 Idaho 347, 144 P.2d 469 (1943).

A right of appeal is regarded as a plain, speedy and adequate remedy at law in the absence of a showing of exceptional circumstances or of the inadequacy of an appeal to protest existing rights, and it never was the

intention or meaning of this section that writs of prohibition should take the place of appeals. Smith v. Young, 71 Idaho 31, 225 P.2d 466 (1950).

Before a writ of prohibition will issue to an inferior court, it must appear both that the inferior court is proceeding without or in excess of its jurisdiction and that there is not a plain, speedy and adequate remedy in the ordinary course of law. Smith v. Young, 71 Idaho 31, 225 P.2d 466 (1950).

Writ of prohibition will not be issued, if there is a right of appeal by statute, since appeal is an adequate remedy. Common Sch. Dist. No. 58 v. Lunden, 71 Idaho 486, 233 P.2d 806 (1951).

Where the petitioners sought to prohibit county boards from interfering with the assessor's office but there was no showing that they had attempted to appeal from the actions complained of, the petitioners did not establish lack of an adequate remedy at law and no writ of prohibition would issue. Clark v. Ada County Bd. of Comm'rs, 98 Idaho 749, 572 P.2d 501 (1977).

Where a criminal case was dismissed and refiled no writ of prohibition would issue to require the trial judge to dismiss the case or reassign it to the original magistrate since defendants were not precluded from their normal right to appeal and would not be subjected to any hardships exceeding those ordinarily borne by a defendant in a criminal prosecution. Rufener v. Shaud, 98 Idaho 823, 573 P.2d 142 (1977).

Plaintiff who had been ordered by the department of water resources to install measuring and recording devices on rim of plaintiff's water diversion of creek had statutory appeals process available to it when district court dismissed its petition for writ of prohibition against department and since the right to an appeal, although unexercised and since expired, was an adequate remedy at law and the issues raised in the petition were the same ones that could have been brought in a petition for judicial review, dismissal of petition was proper. Rim View Trout Co. v. Idaho Dep't of Water Resources, 119 Idaho 676, 809 P.2d 1155 (1991).

It is fundamental that a writ of prohibition will not function as the equivalent of an appeal or a petition for review. Rim View Trout Co. v. Idaho Dep't of Water Resources, 119 Idaho 676, 809 P.2d 1155 (1991).

Summary judgment for respondent was proper where plaintiff failed to state a claim, and any procedural issues related to plaintiff's DUI trial were

not an appropriate basis for writs because plaintiff had an adequate remedy at law — a direct appeal. Ackerman v. Bonneville County, 140 Idaho 307, 92 P.3d 557 (Ct. App. 2004).

Idaho department of land's motion to dismiss the attorney general's writ of prohibition was granted, as there was a plain, speedy, and adequate remedy in the ordinary course of law, such that an extraordinary writ of prohibition would be improper. Injunctive relief would be at least as effective as issuance of the writ, if not more so. State v. Idaho State Bd. of Land Comm'rs (In re Verified Petition), 150 Idaho 547, 249 P.3d 346 (2010).

Basis for Issuance.

Before a writ of prohibition will issue to an inferior court, it must appear both that the inferior court is proceeding without or in excess of its jurisdiction and that there is no plain speedy and adequate remedy in the ordinary course of law. Freiburghaus v. Freiburghaus, 100 Idaho 730, 604 P.2d 1209 (1980).

Discretion of Court.

The issuance of this writ is discretionary with the court and especially where another remedy exists. Maxwell v. Terrell, 37 Idaho 767, 220 P. 411 (1923).

State was not entitled to a writ of prohibition to enjoin a district court from assessing fees for a special master against the state because the appointment of special masters and the assessment of special master costs were matters within the discretion of the district courts. Clear statutory authority existed for the award of such fees, as well direction as to how costs awarded against the state were to be paid. State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

Issuance by Supreme Court.

Once the supreme court has asserted its original jurisdiction, it may issue writs of mandamus and/or prohibition. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Issuance Error.

Since by virtue of § 1-2210, and Idaho R. Civ. P. 82(c)(2) and a rule of the third judicial circuit, lawyer magistrate had subject matter jurisdiction in divorce action, where after holding a hearing on the matter he found that a common-law marriage existed and ordered defendant to pay alimony pendente lite and attorney fees, district court erred in issuing writ of prohibition forbidding any further action by the magistrate in the proceedings. Freiburghaus v. Freiburghaus, 100 Idaho 730, 604 P.2d 1209 (1980).

Jurisdictional Question Essential.

Prohibition as authorized by the Idaho constitution is the common law writ and it will not issue to prohibit purely ministerial acts. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904); Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934).

The legislature did not intend by these sections that the writ be used to prevent all acts, when wrongfully threatened, which mandate may compel, when wrongfully refused, for excess, or want of, jurisdiction is an indispensable element of the writ of prohibition. Taylor v. Girard, 54 Idaho 787, 36 P.2d 773 (1934).

A writ of prohibition will not issue unless it is made to appear that the tribunal, corporation, board, or person is proceeding without or in excess of jurisdiction, and also that there is no plain, speedy, and adequate remedy in the ordinary course of law. Roark v. Koelsch, 62 Idaho 626, 115 P.2d 95 (1941).

The district court acted within its jurisdiction in finding divorced wife in contempt for refusing her divorced husband his reasonable child visitation rights, so that writ of prohibition was improperly sought, improvidently issued and was quashed since such a writ is to issue only when a court acts in excess of its jurisdiction and no other adequate remedy exists. Dey v. Cunningham, 93 Idaho 684, 471 P.2d 71 (1970).

Multiplicity of Parties and Witnesses.

Prohibition lies to stay proceedings that would entail bringing in hundreds of parties defendant and require a multitude of witnesses to sustain the issues tendered. Nampa & Meridian Irrigation Dist. v. Barclay, 56 Idaho 13, 47 P.2d 916 (1935).

Parties.

Same degree of strictness in regard to parties is not maintained in prohibition as in mandate; writ of prohibition may be issued on application of any person shown to be interested in the litigation; he need not necessarily be named as a party in the original action; he may make himself a party by showing that he has an interest in controversy and by moving to set aside judgment or order made without or in excess of jurisdiction. Cronan v. District Court, 15 Idaho 184, 96 P. 768 (1908).

Past Acts.

An applicant bears the burden of showing that a respondent is acting without or in excess of its jurisdiction and that the writ will effectively prevent the respondent from so acting and, accordingly, a past act is not subject to a writ. Clark v. Ada County Bd. of Comm'rs, 98 Idaho 749, 572 P.2d 501 (1977).

Where the petitioners requested the court to prohibit the state tax commission from certifying a tax roll or interfering with the management of the assessor's office and to prohibit the board of equalization from acting on the tax roll, such of these actions as had already been completed would not be prohibited. Clark v. Ada County Bd. of Comm'rs, 98 Idaho 749, 572 P.2d 501 (1977).

Purpose of Writ.

Writ of prohibition is used to arrest proceedings involving lack of or excess of jurisdiction and not to attack errors committed in exercise of jurisdiction. Gasper v. District Court, 74 Idaho 388, 264 P.2d 679 (1953).

Stay of Contempt Proceedings.

Writ of prohibition is proper remedy when a district judge assumes to act in a case to which he is a party and in which he has a direct interest, as where he attempts to punish one for contempt of court as if the contempt had been committed in the immediate view and presence of the court, when such is not the case. Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

Sufficiency of Petition and Showing.

Upon an application for a writ of prohibition, the petition must show all facts necessary to entitle the petitioner to the writ, and if it does not, the writ

will be denied. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

Cited Olden v. Paxton, 27 Idaho 597, 150 P. 40 (1915); Malloy v. Keel, 43 Idaho 211, 250 P. 389 (1926); Evans v. District Court, 47 Idaho 267, 275 P. 99 (1929); Harrigfeld v. District Court of Seventh Judicial Dist., 95 Idaho 540, 511 P.2d 822 (1973); Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976); Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983); Crooks v. Maynard, 112 Idaho 312, 732 P.2d 281 (1987); State v. Blume, 113 Idaho 224, 743 P.2d 92 (Ct. App. 1987); Westover v. Cundick, 161 Idaho 933, 393 P.3d 593 (2017).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prohibition, § 1 et seq.

C.J.S. — 73 C.J.S., Prohibition, § 1 et seq.

ALR. — Summary judgment in mandamus or prohibition cases. 3 A.L.R.3d 675.

Judgment granting or denying writ of mandamus or prohibition as res judicata. 21 A.L.R.3d 206.

Availability of writ of prohibition against acts of public prosecutor, 16 A.L.R.4th 112.

§ 7-403. Alternative and peremptory writs. — The writs must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, or to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

History.

C.C.P. 1881, § 753; R.S., R.C., & C.L., § 4996; C.S., § 7269; I.C.A., § 13-403; am. 1996, ch. 224, § 4, p. 736.

CASE NOTES

Cited Brookshier v. Hyatt, 91 Idaho 305, 420 P.2d 788 (1966); Coeur d'Alene Indus. Park Property Owners Ass'n v. City of Coeur d'Alene, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

§ 7-404. Application of mandamus procedure. — The provisions of the preceding sections from 7-305 to 7-314, both inclusive, apply to the proceedings for writ of prohibition.

History.

C.C.P. 1881, § 754; R.S., R.C., & C.L., § 4997; C.S., § 7270; I.C.A., § 13-404.

CASE NOTES

Cited Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952); Aero Serv. Corp. W. v. Benson, 84 Idaho 416, 374 P.2d 277 (1962); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Idaho Code Ch. 5

Chapter 5
PROVISIONS APPLICABLE TO WRITS IN GENERAL

Sec.

7-501 — 7-503. [Repealed.]

§ 7-501, 7-502. Issuance in vacation — Application of general rules of practice. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 755, 756; R.S., R.C., & C.L., §§ 5000, 5005; C.S., §§ 7271, 7272; I.C.A., §§ 13-501, 13-502, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule see, Idaho App. R. 5.

§ 7-503. New trials and appeals. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 757; R.S., R.C., & C.L., § 5006; C.S., § 7273; I.C.A., § 13-503, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. R. 62(c) and Idaho App. R. 3.

Idaho Code Ch. 6

Chapter 6
CONTEMPTS

Sec.

7-601. Contempts defined.

7-602. Reentry of dispossessed person on real property — Procedure upon conviction.

7-603. Contempt in presence of court — Punishment.

7-604. Contempt out of court's presence — Attachment.

7-605. Provision for bail.

7-606. Custody of defendant.

7-607. Manner of putting in bail.

7-608. Return of warrant.

7-609. Hearing.

7-610. Judgment — Penalty.

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Idaho Code § 7-601

§ 7-601. Contempts defined. — The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceedings.

2. A breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceedings.

3. Misbehavior in office or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner or other person appointed or elected to perform a judicial or ministerial service.

4. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

5. Disobedience of any lawful judgment, order or process of the court.

6. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority.

7. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial.

9. Any other unlawful interference with the process or proceedings of a court.

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

11. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

12. Disobedience, by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

History.

C.C.P. 1881, § 830; R.S., R.C., & C.L., § 5155; C.S., § 7383; I.C.A., § 13-601.

STATUTORY NOTES

Cross References.

Abbreviation and numbers, use in pleadings, Idaho R. Civ. P. 10(a)(3).

Aeronautics, failure to obey court order compelling compliance with subpoena of Idaho department of transportation, § 21-116.

Aeronautics, violation of court orders under uniform state aeronautics department act, § 21-121.

Artificial insemination of domestic animals, refusal to obey court order for hearing upon revocation of license to practice, § 25-810.

Attachment for refusal to appear before state board of bar examiners, § 3-414.

Attorney practicing without license, § 3-104.

Attorneys, board of commissioners of Idaho state bar, disobedience to court order enforcing subpoena a contempt, § 3-414.

Certain contempts a misdemeanor, § 18-1801.

Civil arrest of person responding to subpoena as contempt, § 9-1304.

Contempt also punishable as crime, § 18-302.

Costs, Idaho R. Civ. P. 54(d)(1) through 54(d)(7).

Depositions, refusal of witness to attend for taking a contempt, Idaho R. Civ. P. 37(b).

Deposit of money in court, contempt in disobeying an order for, § 8-703.

Disobedience to a subpoena, § 9-708, Idaho R. Civ. P. 45(h).

Grand juror participating in deliberation after challenge sustained against him is guilty of contempt, § 19-1007.

Inherent powers of courts, § 1-1603.

Inherent powers of judicial officers to preserve order in court, and compel obedience to their orders, § 1-1901.

Judicial officers may punish for contempt, § 1-1902.

Legislature, subpoena to appear before, contempt in disobedience of, § 67-409.

Liquor law enforcement, failure to testify or respond to summons a contempt, § 23-807.

Liquor nuisance, violation of abatement order a contempt, § 23-710.

Mandate, disobedience to writ of, penalty, § 7-314.

Moral nuisances, violation of injunction and order of abatement of, §§ 52-402, 52-413.

Proceedings supplementary to execution, disobedience of orders a contempt, § 11-508.

Proceedings to be in English language, Idaho R. Civ. P. 10(a)(3).

Rescue as criminal offense, § 18-2501.

Service of contempt papers must be on party, Idaho R. Civ. P. 5(a), 5(b).

Statute of limitations applicable to special proceedings of a civil nature, § 5-240.

Successive applications for orders, Idaho R. Civ. P. 11(a)(2).

Supplementary proceedings, contempt in refusal to obey orders of a referee in, § 11-508.

Water rates, subpoenas issued by county commissioners in fixing, contempt in refusing to obey, § 42-1004.

Witness, arrest when privileged from, a contempt of court, § 9-1304.

Writ of mandate, contempt in disobeying, § 7-314.

CASE NOTES

Administrative judges.

Attorney magistrate.

Award of attorney fees.

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Administrative Judges.

Section 1-907, which lists the powers and duties of an administrative judge, does not include contempt powers. However, § 1-1603 provides that "[e]very court has power: . . . [t]o compel obedience to its . . . orders . . .," and § 1-1901 equips each "judicial officer" with similar powers and although there is no case law as to whether an administrative judge is classified as a judicial officer, it is reasonable to assume that he is. Crooks v. Maynard, 913 F.2d 699 (9th Cir. 1990).

Attorney Magistrate.

The attorney magistrate, in conducting habeas corpus proceedings, exercises the judicial power of the state of Idaho and, in order to vindicate his jurisdiction and proper function, the magistrate is vested with the judicial contempt power; while this power has been recognized by statute (Title 7, chapter 6), its source lies in the Constitution and the common law. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Award of Attorney Fees.

An injunction which prohibited defendants from engaging in mining operations until they received a permit to do so was a valid and lawful order of the court, violation of which was grounds for contempt; accordingly, the award of attorney fees pursuant to a contempt finding was proper. State ex rel. Evans v. Click, 102 Idaho 443, 631 P.2d 614 (1981), cert. denied, 457 U.S. 1116, 102 S. Ct. 2927, 73 L. Ed. 2d 1328 (1982).

Contractual Obligation.

Bail bondsman's contractual obligation to pay forfeited bond was a civil liability enforceable by the prosecuting attorney in a separate civil action, and district court was without authority to enforce payment of the bond forfeiture under the penalty of contempt. State v. Rocha, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

Construction and Application.

Since §§ 7-601 to 7-604 were copied from the California Code, and had been construed by the highest court of that state at time of their adoption by the legislature of this state, the supreme court accepted the construction placed upon them by courts of the state from which they were taken. In re Niday, 15 Idaho 559, 98 P. 845 (1908).

Free criticism of all decisions of court is allowed and invited, but criticism ceases and contempt begins when malicious slander, vilification and defamation bring courts and administration of the law into dishonor and disrepute among the people. McDougall v. Sheridan, 23 Idaho 191, 128 P. 954 (1913).

Probate courts, or judges thereof, have jurisdiction over matters of contempt as provided in this chapter. Harkness v. Hyde, 31 Idaho 784, 176 P. 885 (1918).

Contempt proceedings will not lie against party for wrongfully diverting water to his own use where its use has been decreed to others, when his conduct does not otherwise violate any judgment, order, or process of court. Albrethson v. Ensign, 32 Idaho 687, 186 P. 911 (1920).

Contempt is not proper proceeding to determine issue when person not party to judgment sets up bona fide claim to title of property involved in such judgment. Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

A contempt proceeding under this section is a special proceeding criminal in nature, since a violation thereof is punishable by fine or imprisonment. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972).

Custody Order.

In a case where the mother granted her consent to her 17-year-old child's marriage, but the father did not, the district court erred in affirming the magistrate's judgment holding the mother in contempt for violating the order modifying custody, because the order did not clearly and unequivocally prohibit the mother from consenting to the child's marriage. Thompson v. Bybee, 161 Idaho 158, 384 P.3d 405 (Ct. App. 2016).

Due Process.

Because of the criminal nature of a contempt proceeding, a person charged with contempt under this section is entitled to certain procedural due process protections before the court can impose sanctions: he is entitled to notice of the exact charges against him, proof that he had knowledge of the terms of the court's order that he was alleged to have violated, notice of the sanctions which might be imposed against him (fine or jail term), and a trial or hearing on the charges raised. Ross v. Coleman Co., 114 Idaho 817, 761 P.2d 1169 (1988).

An order to show cause is not fatally defective if it does not contain notice of possible sanctions, and as long as the contemnor is provided notice of the possible sanctions before admitting or denying the contempt allegation, due process, insofar as notice of the possible sanctions, is satisfied. Muthersbaugh v. Neumann, 133 Idaho 677, 991 P.2d 865 (Ct. App. 1999).

In contempt proceedings for illegal practice of law, a demurrer would not lie to a single paragraph of the petition on the ground that it did not state

facts sufficient to constitute practicing law, since the petition was sufficient if taken as a whole, and if it stated facts as a whole to constitute a charge of contempt, that is all that is required. In re Matthews, 57 Idaho 75, 62 P.2d 578 (1936).

Immunity.

A district judge who was also serving as an administrative district judge was cloaked in absolute judicial immunity from liability when he jailed a clerk and deputy clerk of court pursuant to a contempt order even though the judge was not in chambers nor were the parties involved in an adversary proceeding; jurisdiction is construed broadly where the issue is the immunity of a judge. Crooks v. Maynard, 913 F.2d 699 (9th Cir. 1990).

In General.

While this chapter provides statutory guidance with respect to contempts, it may not constitutionally circumscribe the judicial power conferred by Idaho Const., Art. V, § 2, the power recognized by § 1-1603, or the inherent common-law contempt power. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Labor Disputes.

The circuit court of appeals which had granted a decree enforcing back pay against an employer, on petition of the board, granted injunction restraining estranged wives and creditors of the employees entitled to the back pay from maintaining actions in the state courts for the purpose of carrying into effect attachment writs, and injunctive orders against the employer for the purpose of reaching back pay, since the power to punish contempt was not an adequate remedy. NLRB v. Sunshine Mining Co., 125 F.2d 757 (9th Cir. 1942).

Review.

While the supreme court has plenary power under Idaho Const., Art. V, § 9, to review a contempt case and contempt orders, a writ of review remains the proper method of securing review of a contempt order in the usual case. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Sufficiency of Affidavit.

Since contempt proceedings are quasi-criminal in nature, even though designed to impose punishment for violation of an order made in a civil action, no intendments or presumptions may be indulged to aid the sufficiency of the affidavit charging the contempt. First Sec. Bank v. Hansen, 107 Idaho 472, 690 P.2d 927 (1984).

Plaintiff's affidavit, wherein she alleged that a lawful court order existed requiring that defendant pay child support, that defendant had knowledge of that order, and that defendant had failed to comply with that order, was sufficient to vest the magistrate with jurisdiction over the contempt action. Muthersbaugh v. Neumann, 133 Idaho 677, 991 P.2d 865 (Ct. App. 1999).

Void Orders.

Disobedience of void order is not punishable as contempt of court. MacWatters v. Stockslager, 29 Idaho 803, 162 P. 671 (1917).

A violation of an order which is void because of lack of jurisdiction to make it is not a contempt of court and no one is under compulsion to obey it. State v. McNichols, 62 Idaho 616, 115 P.2d 104 (1941).

Water Rights.

The testimony clearly showed a course of wilful and persistent violation on the part of both defendants of the district court's restraining order to cease interfering with plaintiff landowners' use of water and by virtue thereof, factually, the district court was justified in adjudging defendants and each of them in contempt of its order. Nordick v. Sorensen, 81 Idaho 117, 338 P.2d 766 (1959).

Willfulness.

An allegation of willfulness is not required in the initiating affidavit of an indirect contempt proceeding for enforcement of court ordered child support. Muthersbaugh v. Neumann, 133 Idaho 677, 991 P.2d 865 (Ct. App. 1999).

Definition of "willful" as an indifferent disregard of duty or a remissness and failure in performance of a duty but not a deliberately and maliciously planned dereliction of duty applies to contempt proceedings. Watson v. Weick (In re Weick), 142 Idaho 275, 127 P.3d 178 (2005).

Witnesses.

When an attorney is called as a witness and declines to answer questions or to produce letters or documents on the ground of privilege, the burden is upon him to establish the general privileged character of the communications or documents. In re Niday, 15 Idaho 559, 98 P. 845 (1908).

A recalcitrant witness may be cited for contempt; continued refusal to answer questions within an area results in but a single contempt of a continuing nature and, to counter such contempt, civil as well as criminal contempt sanctions may be imposed although the imposition of multiple criminal sanctions is impermissible. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Cited United States Fid. & Guar. Co. v. Fort Misery Hwy. Dist., 22 F.2d 369 (9th Cir. 1927); Bean v. State, 58 Idaho 797, 79 P.2d 540 (1938); Julien v. Barker, 75 Idaho 413, 272 P.2d 718 (1954); Weyyakin Ranch Property Owners' Ass'n v. City of Ketchum, 127 Idaho 327, 896 P.2d 327 (1995); Smith v. Smith, 136 Idaho 120, 29 P.3d 956 (Ct. App. 2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d, Contempt, § 1 et seq.

C.J.S. — 17 C.J.S., Contempt, § 1 et seq.

ALR. — Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt. 8 A.L.R.3d 657.

Release of information concerning forthcoming or pending trial as ground for contempt proceedings or other disciplinary measures against member of the bar. 11 A.L.R.3d 1104.

Appealability of acquittal from or dismissal of charge of contempt of court. 24 A.L.R.3d 650.

Prejudicial effect of holding accused in contempt of court in presence of jury. 29 A.L.R.3d 1399.

Appealability of contempt adjudication or conviction. 33 A.L.R.3d 448.

Contempt adjudication or conviction as subject to review other than by appeal or writ of error. 33 A.L.R.3d 589.

Publication or broadcast, during course of trial, of matter prejudicial to criminal defendant as contempt. 33 A.L.R.3d 1116.

Attorney's refusal to accept appointment to defend indigent, or to proceed in such defense, as contempt. 36 A.L.R.3d 1221.

Attack on judiciary as a whole as indirect contempt. 40 A.L.R.3d 1204.

Defense of entrapment in contempt proceedings. 41 A.L.R.3d 418.

Allowance of attorneys' fees in civil contempt proceedings. 43 A.L.R.3d 793.

Right of counsel in contempt proceedings. 52 A.L.R.3d 1002.

Mortgagor's interference with property subject to order of foreclosure and sale as contempt of court. 54 A.L.R.3d 1242.

Picketing court or judge as contempt. 58 A.L.R.3d 1297.

Assault on attorney as contempt. 61 A.L.R.3d 500.

Addressing allegedly insulting remarks to court during course of trial as contempt. 68 A.L.R.3d 273.

Conduct of attorney in connection with making objections or taking exceptions as contempt of court. 68 A.L.R.3d 314.

Refusal to answer questions before state grand jury as direct contempt of court. 69 A.L.R.3d 501.

Affidavits or motion for disqualification of judge as contempt. 70 A.L.R.3d 797.

Contempt for violation of compromise on settlement the term of which was approved by court but not incorporated in court order, decree, or judgment. 84 A.L.R.3d 1047.

Right of injured party to award of compensatory damages or fine in contempt proceedings. 85 A.L.R.3d 895.

Attorney's failure to attend court, or tardiness, as contempt. 13 A.L.R.4th 122.

Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence. 37 A.L.R.4th

1004.

Holding jurors in contempt under state law. 93 A.L.R.5th 493.

Construction of provision in federal criminal procedure rule 42(b) that if contempt charges involve disrespect to or criticism of judge, he is disqualified from presiding at trial or hearing except with defendant's consent. 3 A.L.R. Fed. 420.

§ 7-602. Reentry of dispossessed person on real property — Procedure upon conviction. — Every person dispossessed or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction, and who, not having right so to do, reenters into or upon, or takes possession of, any such real property, or induces or procures any person not having right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt the court shall immediately issue an alias process directed to the proper officer, and requiring him to restore the party entitled to the possession of such property under the original judgment or process, to such possession.

History.

C.C.P. 1881, § 831; R.S., R.C., & C.L., § 5156; C.S., § 7384; I.C.A., § 13-602; am. 2012, ch. 20, § 2, p. 66.

STATUTORY NOTES

Cross References.

Malicious injury to real property as criminal offense, § 18-7001.

Amendments.

The 2012 amendment, by ch. 20, substituted "the court shall immediately" for "or justice of the peace must immediately" near the beginning of the last sentence.

§ 7-603. Contempt in presence of court — Punishment. — When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officer.

History.

C.C.P. 1881, § 832; R.S., R.C., & C.L., § 5157; C.S., § 7385; I.C.A., § 13-603.

CASE NOTES

Affidavit.

— Elements.

— Function.

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— On review.

— Summary contempt proceedings.

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Affidavit.

The function of the affidavit provided for in this section is to apprise the alleged contemner of the particular facts of which he is accused so that he may meet such accusations at the hearing. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972).

— Elements.

Jurisdiction of a district court in indirect contempt proceedings initiated under this section is founded upon an initiating affidavit which must set out all the essential elements of the contempt, and one of the essential elements is knowledge on the part of the contemner or his attorney of the order in which he is alleged to be in contempt. State v. Palmlund, 95 Idaho 150, 504 P.2d 1199 (1972).

The initiating affidavit must allege that the contemnor or his attorney was served with the order which he is charged as having violated, or that he had actual knowledge of it. First Sec. Bank v. Hansen, 107 Idaho 472, 690 P.2d 927 (1984).

In an indirect contempt proceeding, the court acquires no jurisdiction to proceed unless a sufficient affidavit is presented; the initiating affidavit must allege that the contemnor or his attorney has been served with or has actual knowledge of the order and that the order has been violated. Nab v. Nab, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

— Function.

The function of the affidavit is to apprise the alleged contemnor of the particular facts of which he is accused, so that he may meet such accusations at the hearing. Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

— Sufficiency.

An affidavit by the clerk of the court charging a party with contempt of court by violation of a support order in a divorce case which did not allege that the party was served with the order or that he had actual knowledge of it was insufficient, even though the record showed that the party had appeared personally in the case. Jones v. Jones, 91 Idaho 578, 428 P.2d 497 (1967).

The court is without jurisdiction if the affidavit required by this section fails to recite with particularity on its face the substantive facts which constitute, or might constitute, a contempt. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972).

In evaluating the sufficiency of an affidavit relied upon as the basis of a contempt proceeding, a court cannot indulge in any intendments or presumptions in its favor. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972); First Sec. Bank v. Hansen, 107 Idaho 472, 690 P.2d 927 (1984).

The affidavit required by this section failed to state a prima facie case against the petitioner-lawyer in that it did not allege the particular acts or omissions which constituted violations of his duties as an attorney or as guardian of an estate. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972).

Where the affidavit required by this section fails to allege all essential material facts, such a deficiency cannot be cured by proof supplied at the hearing or by judicial notice of the court's own records. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972); Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

When an affidavit is required by this section, the court presiding over the contempt hearing acquires no jurisdiction to proceed until a sufficient affidavit is presented. Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972).

Where the affidavit forming the basis for the trial court's finding of contempt was insufficient, the trial court lacked jurisdiction to make a finding and its order of contempt and attendant fine had to be reversed. First Sec. Bank v. Hansen, 107 Idaho 472, 690 P.2d 927 (1984).

Where, in an action to modify child support payments, the magistrate found the father in contempt of court for his failure to pay child support prior to his incarceration. The wife averred in her affidavit that the father had been served with the default divorce decree or had actual knowledge of it, that she had received no child support payments from him since the order was entered, and that accrued payments totaling $7200 were due. The affidavit presented a prima facie case for contempt and was sufficient to provide the magistrate with jurisdiction. Nab v. Nab, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Application.

Bringing an action against a judge is not contempt if it is brought in good faith and allegations of the pleadings are appropriate to the kind of action. Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

Filing of complaint against judge in one county while court is not in session there and judge was holding court in another county, if a contempt, is not one committed in the immediate view and presence of court. Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

Party cannot be punished for contempt for disobedience of order that court did not have jurisdiction to make. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

Contemnor's Prior History.

A contemnor's prior history can be considered in determining the appropriate sanction; therefore, there was no error in considering the prior history of the attorney's difficulty in being in court at the appointed time. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Defenses.

To justify a coercive sanction, a person held in civil contempt must be able to comply with the court order in question; even if a defendant is unable to attack an enforcement order on the ground that he was unable to comply when the order was issued, he still may assert a present inability to comply as a defense to the contempt, but the burden of proving plainly and unmistakably that compliance is impossible rests with the contemnor. Nab v. Nab, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Failure to Appear.

An attorney's failure to appear is a direct contempt and, as such, no affidavits were required for the court to initiate contempt proceedings against the absent counsel. State v. Epperson, 130 Idaho 905, 950 P.2d 1244 (1997).

Hearing Required.

An attorney's failure to be present in court when scheduled without valid excuse constitutes a hybrid form of direct contempt because the circumstances surrounding the absence were readily apparent to the court, but notice of the charges and a hearing were necessary; therefore, the court must issue an order to show cause and conduct a hearing to allow the attorney to explain the absence, and proof of knowledge by the attorney of the original court order must also be shown. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Incarceration.

The incarceration of the contemnor is not a voluntary or bad faith change in circumstance in the sense that the contemnor's act is self-disabling; therefore, a change of economic circumstances due to incarceration may form a valid basis for inability to comply with a contempt order. Nab v. Nab, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Judge as Witness.

Both this section and the Idaho criminal rules of court allow, if not require, that the judge who witnessed the conduct punish such conduct; therefore, because the judge is to preside at the hearing and the judge cannot be called as a witness, there is no right to call the judge as a witness in summary contempt proceedings. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Notice.

Statements made by defendant attorney and magistrate in contempt proceeding showed defendant had sufficient knowledge of the possible sanctions, and, therefore, there was no error by failing to include notice of the possible sanctions in the order to show cause. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Because once an attorney has been given the opportunity to explain the absence to the court, all elements of direct contempt are present and the attorney's absence is a direct contempt and because the attorney was notified of the contempt charge and the order, the district court did not err in treating the attorney's failure to be present as a direct contempt. State v. Owen, 126 Idaho 871, 893 P.2d 818 (Ct. App. 1995).

Procedure.

Where alleged contempt occurs outside presence of court, affidavit is complaint and must set forth acts which constitute contempt. Harkness v. Hyde, 31 Idaho 784, 176 P. 885 (1918); Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

Where facts as set out negative idea that contempt was "committed in the immediate view and presence of the court or judge at chambers," summary method of punishment provided by this section should not be followed. Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

Where district court judge tries cause in district other than his own, he cannot hear contempt proceedings arising out of enforcement of judgment in such cause outside the district in which judgment was rendered. Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

Personal service of order and demand are not necessary where party complained of has personal notice of order. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

Alleged contemner in indirect contempt proceedings who did not raise the defense of failure to allege knowledge of the order of contempt in the affidavit by motion at the trial stage and all of the essential elements of the contempt being proved at the trial, cannot for the first time on appeal raise the issue of the sufficiency of the initiating affidavit. State v. Palmlund, 95 Idaho 150, 504 P.2d 1199 (1972).

— On Review.

Where attorney argued there was no substantial and competent evidence to support the district court's finding of contempt where attorney failed to appear at client's criminal trial, the only evidence which the court of appeals could properly consider supported the district court's finding of contempt as attorney failed to attend the show cause hearing and therefore

no transcripts demonstrating that the attorney ever offered his explanations before the district court in the course of a hearing where available for review. State v. Owen, 126 Idaho 871, 893 P.2d 818 (Ct. App. 1995).

Because when the contempt is an indirect contempt, an affidavit must be presented to the court and in this case it was not included in the record, reviewing court had to conclude the contempt order was properly served. State v. Schorzman, 129 Idaho 313, 924 P.2d 214 (1996).

— Summary Contempt Proceedings.

Because the necessities of the summary contempt proceeding require that the judge who witnessed the conduct preside at the hearing and Idaho rules of evidence bar a judge from serving as both judge and witness in the same proceeding, there is no right to call a judge as a witness in summary contempt proceedings. State v. Owen, 126 Idaho 871, 893 P.2d 818 (Ct. App. 1995).

Recusal by Judge.

A judge is not automatically prejudiced because it is the judge that is bringing the motion to show cause in a contempt proceeding; therefore, requiring recusal by a judge because it is the judge that institutes the contempt proceedings would not serve the interests of justice. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Contempt proceedings are unique, criminal rules are used for guidance only, and they are not mandatory; therefore, in a proceeding for direct contempt, there is no right to disqualify the involved judge where the conduct of the attorney was not a personal affront to the magistrate. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Sanctions.

The exercise of the broad power to impose civil sanctions is not without limitation; the sanctions imposed will be subject to appellate review under an abuse of discretion standard. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Where reporter was adamant regarding her refusal to answer the questions first propounded in habeas corpus proceeding, which resulted in but a single contempt of a continuing nature, and magistrate first imposed a

civil sanction by ordering reporter incarcerated until she purged herself of the contempt, there was no error in this ruling. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Magistrate's subsequent modification of contempt order, which originally imposed incarceration, to impose a daily $500.00 fine for each day that reporter continued to refuse to answer the questions put to her in a habeas corpus proceeding was to coerce her testimony; this modification did not result in multiple criminal sanctions, but rather constituted a continuing coercive force terminable by compliance of the contemnor — the answering of the questions. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Where reporter refused to answer questions in habeas corpus proceeding seeking to return child to father's custody, the compelling state interests — the sanctity of the writ of habeas corpus and the safety of the child — outweighed any public interest in an unfettered press and magistrate did not abuse discretion in imposing contempt sanctions of incarceration and fines on reporter. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Where in an action to modify child support the father was intermittently employed prior to his incarceration, had paid some of his attorney fees and had acquired a new motor vehicle, the record was sufficiently clear to preclude the necessity of additional findings by the trial court regarding his ability to pay support, and there was no error in the court's conclusion that he was in contempt of court for diverting funds to his criminal defense instead of paying child support. Nab v. Nab, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Wilfulness.

An indifferent disregard of a duty—not deliberately and with malice—is a proper standard for determining wilfulness when an attorney fails to appear in court, and the burden of producing exculpatory evidence rests on the attorney. State v. Epperson, 130 Idaho 905, 950 P.2d 1244 (1997).

Where attorney failed to appear at the continued arraignment because he neglected to calendar the hearing, this failure amounted to an indifferent disregard of a duty to the court and was contemptuous. State v. Epperson, 130 Idaho 905, 950 P.2d 1244 (1997).

Cited Crooks v. Maynard, 851 F.2d 1562 (9th Cir. 1988); Crooks v. Maynard, 718 F. Supp. 1460 (D. Idaho 1989); Steiner v. Gilbert, 144 Idaho 240, 159 P.3d 877 (2007).

RESEARCH REFERENCES

ALR. — Holding jurors in contempt under state law. 93 A.L.R.5th 493.

§ 7-604. Contempt out of court's presence — Attachment. — When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

History.

C.C.P. 1881, § 833; R.S., R.C., & C.L., § 5158; C.S., § 7386; I.C.A., § 13-604.

STATUTORY NOTES

Cross References.

Civil arrest, § 8-101 et seq.

CASE NOTES

Affidavit, when required.

Contempt as collateral issue.

Procedural requirement.

Affidavit, When Required.

Probate and justice's courts have jurisdiction in matters of contempt as provided by law, but, where any alleged contempt is not committed in the immediate view and presence of the court or judge, no jurisdiction of the contempt is acquired by the court or judge until an affidavit has been presented to such court or judge as required by law. Harkness v. Hyde, 31 Idaho 784, 176 P. 885 (1918) (decision prior to repeal of law establishing probate and justice's courts).

Contempt as Collateral Issue.

The issue of defendant's contempt for failure to support the child of the parties was an issue to be decided in contempt proceedings and, without such procedure, could not be considered as a defense to a motion to modify support order merely on allegation in plaintiff's answer that he was in contempt, since such allegation cannot be substituted for the procedural requisites of the statute on contempt, especially where the alleged contempt was not one committed before the court. Embree v. Embree, 85 Idaho 443, 380 P.2d 216 (1963).

Procedural Requirement.

A mere allegation that a party is in contempt cannot be substituted for the procedural requisites of this section. Nab v. Nab, 114 Idaho 512, 757 P.2d 1231 (Ct. App. 1988).

Cited Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923); Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

§ 7-605. Provision for bail. — Whenever a warrant of attachment is issued, pursuant to this chapter, the court or judge must direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

History.

C.C.P. 1881, § 834; R.S., R.C., & C.L., § 5159; C.S., § 7387; I.C.A., § 13-605.

CASE NOTES

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

§ 7-606. Custody of defendant. — Upon executing the warrant of attachment, the sheriff must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

History.

C.C.P. 1881, § 835; R.S., R.C., & C.L., § 5160; C.S., § 7388; I.C.A., § 13-606.

CASE NOTES

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

§ 7-607. Manner of putting in bail. — When a direction to let the person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two (2) sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon, or they will pay as may be directed the sum specified in the warrant.

History.

C.C.P. 1881, § 836; R.S., R.C., & C.L., § 5161; C.S., § 7389; I.C.A., § 13-607.

CASE NOTES

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

§ 7-608. Return of warrant. — The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

History.

C.C.P. 1881, § 837; R.S., R.C., & C.L., § 5162; C.S., § 7390; I.C.A., § 13-608.

CASE NOTES

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923).

§ 7-609. Hearing. — When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

History.

C.C.P. 1881, § 838; R.S., R.C., & C.L., § 5163; C.S., § 7391; I.C.A., § 13-609.

CASE NOTES

Procedure.

Legislature may prescribe any reasonable procedure to be followed in contempt prosecutions; but it has failed to provide any procedure, and under § 1-1622, when procedure is not provided by legislature, any suitable process or mode of proceeding may be adopted which may appear most conformable to spirit of code. McDougall v. Sheridan, 23 Idaho 191, 128 P. 954 (1913) (see Idaho R. Crim. P. 42 et seq.).

Proceeding to punish summarily for contempt is not a criminal action and person charged with contempt is not entitled to jury trial, and the statutes regarding informations, indictments, and the trial of criminal cases are not applicable to contempt proceedings. McDougall v. Sheridan, 23 Idaho 191, 128 P. 954 (1913) (see Idaho R. Crim. P. 42 et seq.).

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923); Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

§ 7-610. Judgment — Penalty. — Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five thousand dollars ($5,000), or he may be imprisoned not exceeding five (5) days, or both; provided that a person who is guilty of contempt for neglecting to attend or serve as a juror when summoned to do so, or for failing to appear as a prospective juror when summoned by the jury commission under section 2-208(4), Idaho Code, shall be fined in an amount not exceeding five hundred dollars ($500), or may be imprisoned not exceeding five (5) days, or both; and except that if the contempt of which the defendant be adjudged guilty be a disobedience of a judgment or order for the support of minor children, he may be imprisoned not exceeding thirty (30) days in addition to such fine, under this section, as the court may impose. Additionally, the court in its discretion, may award attorney's fees and costs to the prevailing party.

History.

C.C.P. 1881, § 839; R.S., R.C., & C.L., § 5164; C.S., § 7392; I.C.A., § 13-610; am. 1967, ch. 132, § 2, p. 302; am. 1997, ch. 200, § 1, p. 575; am. 2013, ch. 207, § 2, p. 494.

STATUTORY NOTES

Cross References.

Dispositions of fines, § 19-4705.

Amendments.

The 2013 amendment, by ch. 207, inserted "provided that a person who is guilty of contempt for neglecting to attend or serve as a juror when summoned to do so, or for failing to appear as a prospective juror when summoned by the jury commission under section 2-208(4), Idaho Code, shall be fined in an amount not exceeding five hundred dollars ($500), or may be imprisoned not exceeding five (5) days, or both; and" in the first sentence.

CASE NOTES

Attorney fees.

Excessive punishment.

Inherent power of court.

Insufficient basis for contempt.

Jurisdiction of court.

Limitation on punishment.

Notice.

Review of evidence.

Attorney Fees.

Magistrate court did not abuse its discretion in awarding a wife attorney fees in a husband's contempt proceeding, which was dismissed without prejudice; a court can determine that a party is a prevailing party even when the proceedings against the party are dismissed without prejudice, because the dismissal terminates the proceedings against that party. Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015).

Magistrate court did not abuse its discretion in awarding a wife attorney fees in a husband's contempt proceeding, which was dismissed without prejudice, because the order dismissing the contempt proceedings without prejudice was a final order; a final judgment includes a dismissal of all claims for relief without prejudice. Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015).

Neither a husband nor a wife were entitled to appellate attorney fees in an appeal concerning enforcement of a property settlement agreement because there was no prevailing party, as the husband prevailed in a challenge to the trial court's jurisdiction to hold him in contempt, but the wife prevailed in a challenge to the trial court's imposition of sanctions in a related appeal. Kantor v. Kantor, 160 Idaho 803, 379 P.3d 1073 (2016).

Excessive Punishment.

A fine or sentence in excess of that authorized by law is valid to the extent that the court had jurisdiction to impose it, but void as to the excess,

and such is not grounds for reversal. Nordick v. Sorensen, 81 Idaho 117, 338 P.2d 766 (1959).

When this section limited any sanction or penalty for contempt under § 7-601 to a fine of $500 or 5 days in jail, the court's action in imposing $100,000 attorney fees and $17,000 costs as sanctions against the defendants exceeded his statutory authority under this section by $116,500.00. Ross v. Coleman Co., 114 Idaho 817, 761 P.2d 1169 (1988) (maximum fine now $5000).

This section authorizes a court to impose a maximum of five days imprisonment as a penalty for contempt in those cases where contempt is not based upon disobedience of a judgment or order for the support of minor children; therefore, where defendant was found in contempt for failing to comply with plaintiff's discovery request, the district court exceeded the limits of its discretion by ordering that defendant be incarcerated for thirty days. Smith v. Smith, 136 Idaho 120, 29 P.3d 956 (Ct. App. 2001).

Inherent Power of Court.

Power of court to punish summarily for contempt is essential to its very existence; this power is not derived from the legislature which has no authority to restrict such power, so far as courts of record are concerned. McDougall v. Sheridan, 23 Idaho 191, 128 P. 954 (1913).

Even though the finding of contempt and fine against purchaser for his disobedience of the district court's order mandating his signature on a redraft agreement was predicated on an order later found by the court of appeals to be erroneous, the finding of contempt for disobedience of the order was appropriate. Conley v. Whittlesey, 126 Idaho 630, 888 P.2d 804 (Ct. App. 1995).

In a dispute over an access easement, the district court did not abuse its discretion by entering an injunction against appellant for contempt because the district court simply ordered the parties to continue abiding by the terms of the stipulated judgment — terms to which they were already bound. That action clearly fell within the judge's authority to compel obedience. Steiner v. Gilbert, 144 Idaho 240, 159 P.3d 877 (2007).

When appellants' minor daughter was placed on probation for petit theft, the magistrate court violated appellants' Fourth Amendment rights by requiring appellants to submit to random urine testing for drugs. While the magistrate had the authority to impose a probation condition under subsection (1)(j) of § 20-520, a violation of the probation was punishable by criminal contempt under § 7-601 and the exclusionary rule applied. Requiring appellants to undergo urinalysis testing constituted a search that was presumptively invalid without a warrant. State v. Doe, 149 Idaho 353, 233 P.3d 1275 (2010).

Insufficient Basis for Contempt.

On appeal, a finding of contempt of court against defense counsel was vacated because a legitimate misunderstanding between the district court and counsel as to what was expected did not justify summarily imposing criminal contempt upon counsel, especially when the court's order was subject to different interpretations and counsel's interpretation was reasonable. Because counsel complied with one option outlined in the district court's order, she should not have been held in contempt of court for failing to comply with the order. State v. Rice (In re Elliott), 145 Idaho 554, 181 P.3d 480 (2008).

Jurisdiction of Court.

Where plaintiffs were awarded damages for crop damage due to defendants' depriving them of their decreed irrigation waters both prior to and after the issuance of a court order restraining defendants, such award did not grow out of or depend upon defendants' violation of the restraining order, and the court did not exceed its jurisdiction in fining defendants for contempt of the restraining order, since the amount assessed was assessed as a fine and not as plaintiffs' damages, and no part of the fine was adjudged to be paid to the plaintiffs or either of them. Nordick v. Sorensen, 81 Idaho 117, 338 P.2d 766 (1959).

Limitation on Punishment.

This section limits punishment that may be imposed in contempt proceedings, and court cannot assess damages in form of pecuniary indemnity to party injured. Levan v. Richards, 4 Idaho 667, 43 P. 574 (1896).

There can be no punishment for contempt in failing to obey order which court had no jurisdiction to make. Hay v. Hay, 40 Idaho 159, 232 P. 895 (1924).

Although a father was held in contempt for failure to pay child support, a trial court's affirmance of a magistrate court order that denied him the ability to seek modification of child custody and support was error, because denial of access to the courts was not a possible criminal contempt sanction. State Dep't of Health & Welfare v. Slane, 155 Idaho 274, 311 P.3d 286 (2013).

Magistrate court's reference to the statute of limitations for criminal contempt did not constitute an abuse of discretion regarding its decision to award a wife attorney fees in a husband's contempt proceeding; absent legislative action, a criminal contempt sanction cannot be imposed for contempt unless the contempt proceedings are initiated within one year of the commission of the contempt. Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015).

Notice.

Statements made by defendant attorney and magistrate in contempt proceeding showed defendant had sufficient knowledge of the possible sanctions and, therefore, there was no error by failing to include notice of the possible sanctions in the order to show cause. State v. Delezene, 120 Idaho 473, 817 P.2d 139 (1991).

Review of Evidence.

Writ of review upon an order of imprisonment for contempt extends to the evidence itself, when questioned, to the extent of inquiring whether there was any evidence to furnish a substantial basis for adjudging the person guilty of contempt and that the act is yet in the power of the person to perform. Vollmer v. Vollmer, 46 Idaho 97, 266 P. 677 (1928).

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923); In re Hamberg, 37 Idaho 550, 217 P. 264 (1923); Julien v. Barker, 75 Idaho 413, 272 P.2d 718 (1954); Bandelin v. Quinlan, 94 Idaho 858, 499 P.2d 557 (1972); Dutton v. District Court, 95 Idaho 720, 518 P.2d 1182 (1974).

§ 7-611. Contempt consisting in omission. — When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he has performed it, and in that case the act must be specified in the warrant of commitment.

History.

C.C.P. 1881, § 840; R.S., R.C., & C.L., § 5165; C.S., § 7393; I.C.A., § 13-611.

CASE NOTES

Application.

Burden of proof.

Evidence.

Habeas corpus.

Sanctions.

Application.

This statute is applicable to probate court in case where witness refuses to appear or testify or to produce letters and documents ordered by court. In re Niday, 15 Idaho 559, 98 P. 845 (1908).

To justify imprisonment for failure to pay alimony that has accrued from failure to meet regular payments, it must appear that it was within power of person to make the payments at time of commitment. In re Hamberg, 37 Idaho 550, 217 P. 264 (1923); Vollmer v. Vollmer, 46 Idaho 97, 266 P. 677 (1928).

Justice's court did not exceed its jurisdiction in ordering imprisonment of appellant until compliance with the order of the court where contempt in question consisted in the omission to perform an act which was yet in the power of the person to perform. Bean v. State, 58 Idaho 797, 79 P.2d 540 (1938).

There was no abuse of discretion in the district court's order that defendant remain incarcerated beyond the five-day term until the amount he was ordered to pay was paid, because this portion of the contempt order was not punitive but was designed to compel compliance with the order for payment of attorney fees. Smith v. Smith, 136 Idaho 120, 29 P.3d 956 (Ct. App. 2001).

Father who was held in contempt for failure to pay child support was not held under civil contempt because he was required to pay sums in addition to the amount for which he had been found in contempt. State Dep't of Health & Welfare v. Slane, 155 Idaho 274, 311 P.3d 286 (2013).

Where the allegedly required acts have already been performed, the magistrate court may not have impose a civil sanction; only a criminal contempt sanction may be imposed. Charney v. Charney, 159 Idaho 62, 356 P.3d 355 (2015).

Burden of Proof.

Burden is on party to show inability to comply with court order by making a full and fair disclosure of his financial condition. Vollmer v. Vollmer, 46 Idaho 97, 266 P. 677 (1928).

Evidence.

Trial court finding that defendant was guilty of contempt was not subject to attack based on ground that defendant was not able to make payment of support due where evidence showed that defendant had the financial ability to make the payment. In re Martin, 76 Idaho 179, 279 P.2d 873 (1955).

Habeas Corpus.

Petitioner for writ of habeas corpus was entitled to release where order of trial court sentencing him for contempt to six months or until further order of court for refusal to pay $645 due for support did not include a specific finding that petitioner had the ability to pay $645. Kinner v. Steg, 74 Idaho 382, 262 P.2d 994 (1953).

Sanctions.

The exercise of the broad power to impose civil sanctions is not without limitation; the sanctions imposed will be subject to appellate review under

an abuse of discretion standard. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

This section does not preclude alternative civil sanctions under the common law or § 1-1603; in such instances, the coercive force may be implemented by means of prospective conditional fines. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Where reporter was adamant regarding her refusal to answer the questions first propounded in habeas corpus proceeding, which resulted in but a single contempt of a continuing nature, and magistrate first imposed a civil sanction by ordering reporter incarcerated until she purged herself of the contempt, there was no error in this ruling. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Magistrate's subsequent modification of contempt order, which originally imposed incarceration, to impose a daily $500.00 fine for each day that reporter continued to refuse to answer the questions put to her in a habeas corpus proceeding was to coerce her testimony; this modification did not result in multiple criminal sanctions, but rather constituted a continuing coercive force terminable by compliance of the contemnor — the answering of the questions. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Where reporter refused to answer questions in habeas corpus proceeding seeking to return child to father's custody, the compelling state interests — the sanctity of the writ of habeas corpus and the safety of the child — outweighed any public interest in an unfettered press and magistrate did not abuse discretion in imposing contempt sanctions of incarceration and fines on reporter. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

In a dispute over an access easement, the district court did not abuse its discretion by entering an injunction against appellant for contempt because the district court simply ordered the parties to continue abiding by the terms of the stipulated judgment — terms to which they were already bound. That action clearly fell within the judge's authority to compel obedience. Steiner v. Gilbert, 144 Idaho 240, 159 P.3d 877 (2007).

§ 7-612. Additional penalties for child support delinquency. — In addition to the penalties for contempt contained in this chapter, the following additional penalties are available for a child support delinquency:

(1) Work activities. In all cases under chapter 2, title 56, Idaho Code, where the custodial parent or children receive temporary assistance for families in Idaho, and the obligor owes past due support and is not incapacitated, the court may issue an order requiring the obligor to participate in work activities.

(2) License suspension. Pursuant to chapter 14, title 7, Idaho Code, the court may issue an order suspending a license for a child support delinquency as defined by section 7-1402, Idaho Code.

History.

I.C., § 7-612, as added by 1998, ch. 112, § 4, p. 416.

STATUTORY NOTES

Compiler's Notes.

Former § 7-612 was amended and redesignated as § 7-614 by S.L. 1998, ch. 112, § 1.

§ 7-613. Additional penalties for failing to comply with an order providing visitation with a minor child. — In addition to the penalties for contempt contained in this chapter, the court may issue an order suspending a license for failing to comply with an order providing for visitation with a minor child pursuant to chapter 14, title 7, Idaho Code.

History.

I.C., § 7-613, as added by 1998, ch. 112, § 5, p. 416.

STATUTORY NOTES

Compiler's Notes.

Former § 7-613 was redesignated as § 7-615 by S.L. 1998, ch. 112, § 2.

§ 7-614. Nonappearance of defendant. — When the warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

History.

C.C.P. 1881, § 841; R.S., R.C., & C.L., § 5166; C.S., § 7394; I.C.A., § 13-612; am. and redesig. 1998, ch. 112, § 1, p. 416.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 7-612.

Former § 7-614 was redesignated as § 7-616 by S.L. 1998, ch. 112, § 3.

§ 7-615. Excuse for nonattendance — Restraint of personal liberty. — Whenever, by the provisions of this chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

History.

C.C.P. 1881, § 842; R.S., R.C., & C.L., § 5167; C.S., § 7395; I.C.A., § 13-613; am. and redesig. 1998, ch. 112, § 2, p. 416.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 7-613.

§ 7-616. Judgment is final. — The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.

History.

C.C.P. 1881, § 843; R.S., R.C., & C.L., § 5168; C.S., § 7396; I.C.A., § 13-614; am. and redesig. 1998, ch. 112, § 3, p. 416.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 7-614.

CASE NOTES

Criminal acts.

Discretion of supreme court.

No appeal.

Remedies when court exceeds jurisdiction.

Review.

Criminal Acts.

The making of certain acts crimes does not limit the power of the court to punish the same acts as contempts. McDougall v. Sheridan, 23 Idaho 191, 128 P. 954 (1913).

Discretion of Supreme Court.

Although plaintiff could not appeal as a matter of right from that part of the order holding him in contempt for failure to pay alimony and attorney fees, the supreme court nevertheless may, in its discretion, consider such an appeal from the district court. Jones v. Jones, 91 Idaho 578, 428 P.2d 497 (1967); Parker v. Parker, 97 Idaho 209, 541 P.2d 1177 (1975), superseded on other grounds, Stephens v. Stephens, 138 Idaho 195, 61 P.3d 63 (Ct. App. 2002).

Although the judgment and orders of the court or judge, made in cases of contempt, are final and conclusive, under the supreme court's constitutional prerogative to review, upon appeal, any decision of the district courts, the court has discretion to hear an appeal in a contempt case. Lester v. Lester, 99 Idaho 250, 580 P.2d 853 (1978).

No Appeal.

Where district court keeps within its jurisdiction in contempt proceedings and does not abuse its discretion, no appeal lies from its judgment. Levan v. Richards, 4 Idaho 667, 43 P. 574 (1896); Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

An order holding a person in contempt is not an appealable order under this section. Glenn Dale Ranches, Inc. v. Shaub, 95 Idaho 853, 522 P.2d 61 (1974); Parker v. Parker, 97 Idaho 209, 541 P.2d 1177 (1975), superseded on other grounds, Stephens v. Stephens, 138 Idaho 195, 61 P.3d 63 (Ct. App. 2002).

Since there is no appeal as of right from a contempt order, an attempt to appeal from such an order did not divest the jurisdiction of the magistrate under Idaho App. R. 13(b) governing stays on appeal. Marks v. Vehlow, 105 Idaho 560, 671 P.2d 473 (1983).

Remedies When Court Exceeds Jurisdiction.

This section means simply that no appeal lies from judgment or order. It is not intended to declare that such judgments, when rendered without jurisdiction, may not be annulled in proper proceeding. Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

If it appears that judicial officer is about to exceed jurisdiction by trying for contempt without legal authority, party threatened may stay proceeding by writ of prohibition; if he actually adjudges complainant in contempt without jurisdiction, judgment may be annulled by certiorari, and if imprisonment follows, prisoner may be discharged on habeas corpus. Poff v. Scales, 36 Idaho 762, 213 P. 1019 (1923).

Writ of review may be used to inquire whether there was any evidence to furnish substantial basis for adjudging person guilty of contempt, and that act is yet in power of the person to perform. Vollmer v. Vollmer, 46 Idaho 97, 266 P. 677 (1928).

Review.

While, under the provisions of this section, the order holding a person in contempt of court is not an appealable order, the writ of review has been recognized as a proper method by which the actions of a trial court can be reviewed in a contempt proceeding. Mathison v. Felton, 90 Idaho 87, 408 P.2d 457 (1965).

While the order holding a person in contempt under § 18-1801 is not appealable under this section, the writ of review is a proper method by which actions of a court in a contempt proceeding can be reviewed. Barnett v. Reed, 93 Idaho 319, 460 P.2d 744 (1969).

Cited Greene v. Edgington, 37 Idaho 1, 214 P. 751 (1923); Jones v. Jones, 91 Idaho 578, 428 P.2d 497 (1967); State v. Palmlund, 95 Idaho 150, 504 P.2d 1199 (1972); Dutton v. District Court, 95 Idaho 720, 518 P.2d 1182 (1974); Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987).

Chapter 7
EMINENT DOMAIN

Sec.

7-701. Uses for which authorized.

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Idaho Code § 7-701

§ 7-701. Uses for which authorized. — Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature.

2. Public buildings and grounds for the use of any county, incorporated city or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for use on state property or for the use of the inhabitants of any county or incorporated city, or for draining state property for any county or incorporated city, raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels, roads, streets, alleys, and all other public uses for the benefit of the state or of any county, incorporated city or the inhabitants thereof.

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, steam, electric and horse railroads, reservoirs, canals, ditches, flumes, aqueducts and pipes, for public transportation supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for storing and floating logs and lumber on streams not navigable.

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

5. Byroads, leading from highways to residences and farms.

6. Telephones, telegraph and telephone lines.

7. Sewerage of any incorporated city.

8. Cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof.

9. Pipe lines for the transmission, delivery, furnishing or distribution of natural or manufactured gas for light, heat or power, or for the

transportation of crude petroleum or petroleum products; also for tanks, reservoirs, storage, terminal and pumping facilities, telephone, telegraph and power lines necessarily incident to such pipe lines.

10. Snow fences or barriers for the protection of highways from drifting snow.

11. Electric distribution and transmission lines for the delivery, furnishing, distribution, and transmission of electric current for power, lighting, heating or other purposes; and structures, facilities and equipment for the production, generation, and manufacture of electric current for power, lighting, heating or other purposes.

History.

C.C.P. 1881, § 851; R.S., § 5210; am. 1903, p. 203, § 1; reen. R.C., & C.L., § 5210; C.S., § 7404; am. 1923, ch. 98, § 2, p. 122; am. 1931, ch. 39, § 1, p. 74; I.C.A., § 13-701; am. 1933, ch. 211, § 1, p. 443; am. 1951, ch. 58, § 1, p. 85; am. 1974, ch. 136, § 1, p. 1340.

STATUTORY NOTES

Cross References.

Aeronautics department act, condemnation of property authorized under, § 21-106.

Airport zoning act, acquisition of easements to remove hazards, § 21-508.

Airports and air navigation facilities, right to acquire property for, § 21-106.

Cemeteries, power of eminent domain to acquire grounds and property, § 50-320.

Constitutional authorization, Idaho Const., Art. I, § 14.

Costs, Idaho R. Civ. P. 54(d)(2).

Ditches and reservoirs on state lands, right of way for, § 58-601.

Ditches constructed by the authority of the United States, right of way on state lands for, § 58-604.

Drainage districts, assessment of damages for property taken or injured by, § 42-2926.

Drains, right of way for, § 42-1107.

Irrigation districts may exercise right of eminent domain, § 43-908.

Irrigation, right of way for, § 42-1101 et seq.

Joint interstate irrigation districts, § 43-1406.

Mining claim, right of way to cross with tunnels, cross-cuts and the like, § 47-1001.

Mining purposes, rights of way for, § 47-901 et seq.

Mining railroads, tramways, ditches, flumes, rights of way for, § 47-902.

Municipalities given enlarged powers comparable to those herein enumerated, § 7-720.

Railroad may condemn lands for roads and highways when a change of route is made necessary by the construction of the road, § 62-206.

Railroad may condemn right of way to cross other lines of railroad, § 62-204.

Statute of limitations, application to special proceedings of a civil nature, § 5-240.

Successive applications for orders, Idaho R. Civ. P. 11(a)(2).

Effective Dates.

Section 2 of S.L. 1974, ch. 136 declared an emergency. Approved March 28, 1974.

CASE NOTES

Access for irrigation.

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Access for Irrigation.

Where an owner of land is denied access for irrigation water across the lands of an adjacent landowner, the owner may condemn a right-of-way to supply the water under the law of eminent domain. White v. Marty, 97 Idaho 85, 540 P.2d 270 (1975), overruled on other grounds, Carr v. Magistrate Court, 108 Idaho 546, 700 P.2d 949 (1985).

The irrigation and reclamation of arid lands is a well recognized public use, even if the irrigation project is ostensibly intended to benefit only

private individuals, and the right to condemn for individual use is supported on the theory that the development of individual property tends to the complete development of the entire state. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Where an irrigation company had purchased approximately 300 cfs of Snake River water and sought to put that water to beneficial use on land located west of an existing canal system, but where the irrigation company had no canal and there existed no natural waterway by which its water could be transported by gravity to its stockholders' lands, the irrigation company could condemn the right to enlarge and use the existing canal in common with the canal company and thus the irrigation company could divert its water from the Snake River into the canal company's canal system and then reclaim a like amount, with due allowance for seepage and evaporation, at a headgate closer to its irrigation project site. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Appeal.

On appeal from final order of condemnation, court will review the original judgment of condemnation which was invalid and was never entered because of the correction of an error in it as made by respondent. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

Where the state was responsible for an incorrect method of correcting a clerical error in a judgment of condemnation of property, the state could not take advantage of mistake so as to preclude property owners from obtaining a review of the judgment. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

In an action to enjoin trespasses on the plaintiff's land by a reservoir company, which asserted ownership of a water right and right-of-way and easement for a reservoir and ditches on the land, where there was substantial evidence to support the trial court's finding and judgment for the plaintiff, the supreme court was required to affirm the judgment. Condie v. Swainston, 62 Idaho 472, 112 P.2d 787 (1940).

Burden of Proof.

Where landowners specifically alleged that the condemnors had alternative means of access and produced evidence of such alternative means of access, including one road then in use by the condemnors pursuant to a license agreement, it was incumbent upon the condemnors to prove that the alternative means of access were not available to them or that such means of access were not reasonably adequate or sufficient for their purposes. Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978).

Byroads.

Where condemnor fails to show that the way he now has is so insufficient as to reasonably justify condemning another way, he is not entitled to the establishment of the way as a necessity. Eisenbarth v. Delp, 70 Idaho 266, 215 P.2d 812 (1950).

A complaint which referred to plaintiff's land as a farm and alleged the necessity for a roadway from the public highway to that farm was sufficient under subdivision 5 of this section against a motion to dismiss for failure to state a cause of action upon which relief can be granted, it not being for the court to decide whether or not plaintiff could prove his property was a farm. McKenney v. Anselmo, 88 Idaho 197, 398 P.2d 226 (1964).

Whether existing roads constitute a reasonably convenient way to a residence or farm is a question of fact to be determined by the evidence in an action to condemn a roadway across respondent's land under subsection 5 of this section. McKenney v. Anselmo, 88 Idaho 197, 398 P.2d 226 (1965).

Plaintiff was not entitled to have a byroad across defendant's land to the highway when he had access to highways over two other roads across other land. McKenney v. Anselmo, 91 Idaho 118, 416 P.2d 509 (1966).

The fact that the plaintiffs' existing access was by way of a license, rather than an easement across the land of other adjoining property owners, does not destroy either the evidence or the finding of the court that alternative access routes existed nor the trial court's holding based thereon that necessity for condemnation did not exist. Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978).

Use of condemnation to secure an easement to a landlocked piece of property that was not farmland and did not include any residence was not a

"reasonable" method for satisfying a condition precedent to a land sales contract; condemnation is relevant only in matters involving byroads leading to and from farm land and residences, and a condemnation proceeding would likely have been a protracted and hostile affair. Dengler v. Hazel Blessinger Family Trust, 141 Idaho 123, 106 P.3d 449 (2005).

Condemnation.

Condemnation is an act of public power vested by statute in a private plaintiff who may never have engaged — and whose predecessors may never have engaged — in any previous transaction with the current or prior owners of land across which an easement is sought. MacCaskill v. Ebbert, 112 Idaho 1115, 739 P.2d 414 (Ct. App. 1987).

City lacked extraterritorial eminent domain power to condemn easements located outside of its boundaries for the purpose of constructing electric transmission lines, because there is no express grant of extraterritorial eminent domain power in § 7-720 or this section, indicating that the Idaho legislature did not grant, and did not intend to grant, such power in the general eminent domain statutes. Alliance v. City of Idaho Falls, 742 F.3d 1100 (9th Cir. 2013).

Constitutionality and Construction.

This section is not subject to the constitutional objection of depriving persons of property without due process of law. Baillie v. Larson, 138 F. 177 (C.C.D. Idaho 1905).

Person or corporation who exercises power of eminent domain assumes certain obligations to the public, and the granting of that right carries with it right of public supervision and reasonable control. Potlatch Lumber Co. v. Peterson, 12 Idaho 769, 88 P. 426 (1906).

This section, which limits exercise of the right of eminent domain to public uses therein enumerated, was an act of the territorial legislature, which did not specifically mention all the necessary uses of lands declared to be such by the constitution; the uses defined in the constitution can be enforced regardless of whether the legislature repeats the provisions of the constitution in defining for what public uses the right of eminent domain may be exercised. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421,

160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Condemnation is a "special proceeding" to which the intervention statute applies. State ex rel. McKelvey v. Barnes, 55 Idaho 578, 45 P.2d 293 (1935).

Elements of Severance Damage.

Where a part of the owner's contiguous land is taken in a condemnation proceeding, all inconveniences resulting to the owner's remaining land, including an easement or access to a road or right of way formerly enjoyed, which decrease the value of the land retained by the owner, are elements of severance damage for which compensation should be paid. State ex rel. Rich v. Fonburg, 80 Idaho 269, 328 P.2d 60 (1958).

Jurisdiction of Magistrate.

Where an attorney magistrate was without jurisdiction to try an eminent domain case and was not serving in the role of a master or a properly constituted district judge pro tempore, the magistrate's purported judgment entered in a proceeding for condemnation of a right-of-way to carry irrigation water across defendants' land was void and of no effect. White v. Marty, 97 Idaho 85, 540 P.2d 270 (1975).

Pleading, Practice, Procedure.

The allegations of the complaint must be in substantial compliance with the requirements of this section. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

Condemnor must disclose purpose for which he is seeking to condemn property and the general nature and character of improvement or structure he expects to erect to entitle him to maintain his condemnation proceedings. Idaho-Western R.R. v. Columbia Conference Synod, 20 Idaho 568, 119 P. 60 (1911).

Determination of necessity of highway improvement for which land is sought for highway is ultimately a judicial question, on which landowner is entitled to hearing. Grangeville Hwy. Dist. v. Ailshie, 49 Idaho 603, 290 P. 717 (1930).

Under our special condemnation statute, there are three judgments or two judgments and a final order made after judgment to be entered seriatim, the first adjudicating the power, right and necessity of condemning, the second determining the damages and the third and final order of condemnation which gives possession and passes title; the first two, with payment in court or to the owner, are conditions precedent to the third. State ex rel. McKelvey v. Styner, 57 Idaho 144, 63 P.2d 152 (1936).

Private Agency.

In an action for condemnation of land for a private road of necessity, the deference accorded the election by a public agency as to necessity and route was not applicable to a private agency, especially where the latter party has an existing way. Eisenbarth v. Delp, 70 Idaho 266, 215 P.2d 812 (1950).

Public Use.

When Idaho became a state, it assumed the power of eminent domain as one of the inalienable rights of sovereignty, and Congress, when it admitted Idaho into the Union and provided that all school lands granted to the state should not be sold for less than ten dollars ($10.00) per acre, did not intend to deprive the state of the power of eminent domain; the state may exercise such right over all state lands and may grant in such manner as the legislature may provide easements for all of the public uses mentioned in Idaho Const., Art. I, § 14. Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

Absolute necessity need not exist for taking property for public use; it is sufficient if necessity be a reasonable one. Marsh Mining Co. v. Inland Empire Mining & Milling Co., 30 Idaho 1, 165 P. 1128 (1916); Grangeville Hwy. Dist. v. Ailshie, 49 Idaho 603, 290 P. 717 (1930).

Property may be taken under eminent domain proceedings for any purpose the sovereign chooses. Codd v. McGoldrick Lumber Co., 48 Idaho 1, 279 P. 298 (1929).

As a general rule, the right of eminent domain is granted on behalf of public uses only; and what is a public use, or whether or not a claimed right is within the constitution designating as public all uses necessary to development of the material resources of the state so as to entitle claimant

to the right of eminent domain, is a judicial question for the courts. Bassett v. Swenson, 51 Idaho 256, 5 P.2d 722 (1931).

The power of eminent domain extends to every kind of property authorized by law within the jurisdiction of the state, when taken for a public use, including the right of access to and from a public highway. State ex rel. Rich v. Fonburg, 80 Idaho 269, 328 P.2d 60 (1958).

The proposed use of property for urban renewal projects, which plaintiff sought to condemn pursuant to the Idaho Urban Renewal Law (§ 50-2001 et seq.) constituted a public use, as required by the Idaho constitution and various Idaho statutes, even though the majority of buildings would be constructed and occupied by private commercial enterprises, and the taking of property for such purpose would not be a denial of property without due process. Boise Redevelopment Agency v. Yick Kong Corp., 94 Idaho 876, 499 P.2d 575 (1972).

Private individuals may not take the property of other private individuals in order to enhance their purely private enjoyment of their own property; the proposed use need not be strictly public, but it must benefit the public welfare or the economy of the state. Backman v. Lawrence, 147 Idaho 390, 210 P.3d 75 (2009).

— County Highway Proceedings.

County taking land for highway for money consideration plus the construction of "substantial fences on each side of the road" could not acquire title to the highway strip until the fence was built and is liable for damages to growing crops caused by trespassing animals resulting from failure to build such fences. Bel v. Benewah County, 60 Idaho 791, 97 P.2d 397 (1939).

— Electric Lines.

Furnishing of electricity for lighting, transportation, power, and other purposes is a public use for which land may be taken. Hollister v. State, 9 Idaho 8, 71 P. 541 (1903).

Corporation organized to generate and furnish electric energy is a public service corporation authorized to exercise right of eminent domain, though it does not render service directly to public, but furnishes electricity for

distribution to consumers by other persons and corporations. Washington Water Power Co. v. Waters, 186 F. 572 (C.C.D. Idaho 1910).

This section recognizes that somewhere exists the power of condemning lands for power sites and power stations, for generating electrical current and electrical energy, and with it runs the implied power to do those things necessary to generate electrical current that is to be transmitted over the lines. Washington Water Power Co. v. Waters, 19 Idaho 595, 115 P. 682 (1911).

— Electric Railroads.

Electric railroad has power of eminent domain to acquire right of way. Boise Valley Constr. Co. v. Kroeger, 17 Idaho 384, 105 P. 1070 (1909).

— Limited Access Highway.

The state is authorized to condemn land to be used for a limited access highway and acquire the fee title to privately owned property, limiting or curtailing entry of an adjoining landowner which would ordinarily be appurtenant to the land not taken. State ex rel. Rich v. Fonburg, 80 Idaho 269, 328 P.2d 60 (1958).

Offer of state to build a cattle underpass under a proposed limited access highway which offer was not accepted by defendant, a part of whose land was being taken for such highway, was not binding on state after refusal and state could not be required as part of its plans and specifications to construct the underpass. State ex rel. Rich v. Fonburg, 80 Idaho 269, 328 P.2d 60 (1958).

— Logging Roads.

Where temporary logging road is necessary to complete development of material resources of the state, the necessary use of land for right of way is a public use and may be acquired as provided by statute. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

— Municipal Purposes.

In acquiring land for municipal purpose by exercise of power of eminent domain, city council's determination of location of land required will not be

disturbed if made in good faith. Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925).

— Pipe Line.

Condemnation of a right of way for pipe line was a use authorized by law. Yellowstone Pipe Line Co. v. Drummond, 77 Idaho 36, 287 P.2d 288 (1955).

Condemnation of an easement to construct a pipeline for irrigation purposes, a beneficial use, was authorized and reasonably necessary to reduce conveyance losses. Telford Lands LLC v. Cain, 154 Idaho 981, 303 P.3d 1237 (2013).

— Railroad Right of Way.

Congress, in authorizing railroad companies to traverse public lands, did not intend to give them a right to run line of their roads at pleasure, regardless of the rights of settlers. Washington & I.R.R. v. Osborn, 160 U.S. 103, 16 S. Ct. 219, 40 L. Ed. 356 (1895).

— Reservoirs.

Construction of a dam to reservoir the waters for storage to be used for power purposes is a public use. Washington Water Power Co. v. Waters, 19 Idaho 595, 115 P. 682 (1911).

The necessary use of lands for the construction of reservoirs over state lands is subject to the regulation and control of the state. Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

— Sewerage Systems.

Sewerage system is public use within meaning of this section. Twin Falls v. Stubbs, 15 Idaho 68, 96 P. 195 (1908).

If, by its enactment of subdivision 7 of this section, it was the intention of the legislature to restrict the exercise of eminent domain by a sewer district to uses within incorporated cities, then that provision can have no valid effect because the legislature cannot thus annul a provision of the constitution, such as Idaho Const., Art. I, § 14, which clearly includes a sewer district and which authorizes any use necessary to the preservation of the health of the state's inhabitants. It is more likely that the legislature

intended no such territorial restriction. Payette Lakes Water & Sewer Dist. v. Hays, 103 Idaho 717, 653 P.2d 438 (1982).

Where a water and sewer district sought to obtain temporary construction easements and permanent sewer easements across property owners' land for the purpose of constructing a sewerage facility to transport sewage to a treatment plant, the district's purpose was a public use within the meaning of Idaho Const., Art. I, § 14, and was, therefore, an authorized use as contemplated by § 7-721 for purposes of determining the sewer district's entitlement to possession of the property pending trial. Payette Lakes Water & Sewer Dist. v. Hays, 103 Idaho 717, 653 P.2d 438 (1982).

— Stream Floatability.

Necessary use of lands for storage basins and improvement of the floatability of nonnavigable streams may be obtained by exercise of power of eminent domain. Potlatch Lumber Co. v. Peterson, 12 Idaho 769, 88 P. 426 (1906).

Phrase "streams not navigable" means all streams not navigable in fact, and legislature cannot impress character of navigability on stream that is not navigable. Potlatch Lumber Co. v. Peterson, 12 Idaho 769, 88 P. 426 (1906).

One who exercises right of eminent domain in improvement of nonnavigable streams in the state for purpose of floating logs and timber products does not thereby secure exclusive use and control of such streams; but they are open to the use of anyone who may have occasion to use them for any purpose. Potlatch Lumber Co. v. Peterson, 12 Idaho 769, 88 P. 426 (1906).

This section supplements a special act authorizing clearing and straightening of channels of navigable stream without specific provision for compensation. St. Joe Imp. Co. v. Laumierster, 19 Idaho 66, 112 P. 683 (1910).

— Telegraph Right of Way.

This provision, standing alone, unaffected by other statutory enactments, confers upon telegraph company authority to condemn right of way upon right of way of railway company, provided that it does not in any way interfere with the use to which the right of way is already dedicated. Oregon Short Line R.R. v. Postal Tel. Cable Co., 111 F. 842 (9th Cir. 1901).

— Use in Another State.

Condemnation cannot be had in this state for the lone purpose of serving public use in another state, but where the use for which condemnation is sought is a public use in this state and will serve citizens of this state, fact that it may incidentally also benefit citizens and industries of neighboring state will not defeat right of condemnation. Washington Water Power Co. v. Waters, 19 Idaho 595, 115 P. 682 (1911).

State Land.

Since § 7-703 includes land owned by state in private property subject to taking, the state thereby has given its consent to be sued in condemnation proceedings, and district court had jurisdiction to entertain private individual's action for easement right of way for ingress and egress over state land. Petersen v. State, 87 Idaho 361, 393 P.2d 585 (1964).

Cited Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908); Thomas v. Boise City, 25 Idaho 522, 138 P. 1110 (1914); Marsh Mining Co. v. Inland Empire Mining & Milling Co., 30 Idaho 1, 165 P. 1128 (1916); Carbon v. Moon, 68 Idaho 385, 195 P.2d 351 (1948); State ex rel. Symms v. Thirteenth Judicial Dist., 91 Idaho 237, 419 P.2d 679 (1966); Gibbens v. Weisshaupt, 98 Idaho 633, 570 P.2d 870 (1977); Burley Brick & Sand Co. v. Cofer, 102 Idaho 333, 629 P.2d 1166 (1981); Cordwell v. Smith, 105 Idaho 71, 665 P.2d 1081 (Ct. App. 1983); Erickson v. Amoth, 112 Idaho 1122, 739 P.2d 421 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 1 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, § 1 et seq.

ALR. — Use or improvement of highway as establishing grade necessary to entitle abutting owner to compensation on subsequent change. 2 A.L.R.3d 985.

Valuation at time of original wrongful entry by condemnor or at time of subsequent initiation of condemnation proceedings. 2 A.L.R.3d 1038.

Compensable property right, restrictive covenant or right to enforcement thereof as. 4 A.L.R.3d 1137.

Right to condemn property in excess of needs for particular public purpose. 6 A.L.R.3d 297.

Zoning as factor in determination of damages in eminent domain. 9 A.L.R.3d 291.

Deduction of benefits in determining compensation or damages in proceedings involving opening, widening, or otherwise altering highway. 13 A.L.R.3d 1149.

Power to condemn property or interest therein to replace other property taken for public use. 20 A.L.R.3d 862.

Existence of restrictive covenant as element in fixing value of property condemned. 22 A.L.R.3d 961.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves. 35 A.L.R.3d 1293.

Validity of "freezing" ordinances or statutes preventing prospective condemnee from improving, or otherwise changing, the condition of his property. 36 A.L.R.3d 751.

Plotting or planning in anticipation of improvement as taking or damaging of property affected. 37 A.L.R.3d 127.

Cost of substitute facilities as measure of compensation paid to state or municipality for condemnation of public property. 40 A.L.R.3d 143.

Validity and construction of "zoning with compensation" regulation. 41 A.L.R.3d 636.

Measure and elements of damage for limitation of access caused by conversion of conventional road into limited-access highway. 42 A.L.R.3d 148.

Measure of damages for condemnation of cemetery lands. 42 A.L.R.3d 1314.

Propriety of court's consideration of ecological effects of proposed project in determining right of condemnation. 47 A.L.R.3d 1267.

Traffic noise and vibration from highway as element of damages in eminent domain. 51 A.L.R.3d 860.

Condemned property's location in relation to proposed site of building complex or similar improvement as factor in fixing compensation. 51 A.L.R.3d 1050.

Good will or "going concern" value as element of lessee's compensation for taking leasehold in eminent domain. 58 A.L.R.3d 566.

Loss of liquor license as compensable and condemnation proceeding. 58 A.L.R.3d 581.

Compensation for diminution in value of the remainder of property resulting from taking or use of adjoining land of others for the same undertaking. 59 A.L.R.3d 488.

Consideration of fact to that landowner's remaining land will be subject to special assessment in fixing severance damages. 59 A.L.R.3d 534.

Salting for snow removal as taking or damaging abutting property for eminent domain purposes. 64 A.L.R.3d 1239.

Determination of just compensation for condemnation of billboards or other advertising signs. 73 A.L.R.3d 1122.

Right to condemn property owned or used by private educational, charitable, or religious organization. 80 A.L.R.3d 833.

Validity of appropriation of property for anticipated future needs. 80 A.L.R.3d 1085.

Good will as element of damages for condemnation of property on which private business is conducted. 81 A.L.R.3d 198.

Zoning regulations limiting use of property near airport as taking of property. 18 A.L.R.4th 542.

Airport operations or flight of aircraft as taking or damaging of property. 22 A.L.R.4th 863.

Eminent domain: measure and elements of damages or compensation for condemnation of public transportation system. 35 A.L.R.4th 1263.

Validity of extraterritorial condemnation by municipality. 44 A.L.R.6th 259.

Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

§ 7-701A. Limitation on eminent domain for private parties, urban renewal or economic development purposes. — (1) This section limits and restricts the use of eminent domain under the laws of this state or local ordinance by the state of Idaho, its instrumentalities, political subdivisions, public agencies, or bodies corporate and politic of the state to condemn any interest in property in order to convey the condemned interest to a private interest or person as provided herein.

(2) Eminent domain shall not be used to acquire private property:

(a) For any alleged public use which is merely a pretext for the transfer of the condemned property or any interest in that property to a private party;

(b) For the purpose of promoting or effectuating economic development; provided however, that nothing herein shall affect the exercise of eminent domain:

(i) Pursuant to chapter 15, title 70, Idaho Code, and title 42, Idaho Code; or

(ii) Pursuant to chapter 19, 20 or 29, title 50, Idaho Code, except that no private property shall be taken through exercise of eminent domain within the area of operation of a housing authority or within an urban renewal area or within a deteriorated or deteriorating area or within a competitively disadvantaged border community area unless the specific property to be condemned is proven by clear and convincing evidence to be in such condition that it meets all of the following requirements:

1. The property, due to general dilapidation, compromised structural integrity, or failed mechanical systems, endangers life or endangers property by fire or by other perils that pose an actual identifiable threat to building occupants; and

2. The property contains specifically identifiable conditions that pose an actual risk to human health, transmission of disease, juvenile delinquency or criminal content; and

3. The property presents an actual risk of harm to the public health, safety, morals or general welfare; or

(iii) For those public and private uses for which eminent domain is expressly provided in the constitution of the state of Idaho; or

(c) For trails, paths, greenways or other ways for walking, running, hiking, bicycling or equestrian use, unless adjacent to a highway, road or street.

(3) This section shall not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

(4) The rationale for condemnation by the governmental entity proposing to condemn property shall be freely reviewable in the course of judicial proceedings involving exercise of the power of eminent domain.

History.

I.C., § 7-701A, as added by 2006, ch. 96, § 1, p. 270; am. 2015, ch. 122, § 1, p. 310.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 122, in subsection (2), inserted "following" near the end of the introductory paragraph of paragraph (b)(ii) and added paragraph (c).

RESEARCH REFERENCES

Idaho Law Review. — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

§ 7-702. Estates subject to taking. — The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon, and occupation of, lands, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use.

History.

C.C.P. 1881, § 852; R.S., R.C., & C.L., § 5211; C.S., § 7405; I.C.A., § 13-702.

CASE NOTES

Easements.

Fee simple.

Limitation of time of use.

Public use in general.

Easements.

Easements are included in the classification of estates and rights in lands which may be taken for public use. Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958).

Since § 7-703 includes land owned by state in private property subject to taking, the state thereby has given its consent to be sued in condemnation proceedings, and district court had jurisdiction to entertain private individual's action for easement right-of-way over state land. Petersen v. State, 87 Idaho 361, 393 P.2d 585 (1964).

Rights of way may be condemned for the purposes of concurrent use in common with the existing owners; in such cases, the original easement owner is not really being deprived of his easement outright, only its exclusive use, and the condemnation imposes a form of concurrent ownership where both the condemnor and condemnee will enjoy the right to use the easement. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Fee Simple.

Since a dam is a permanent structure, fee simple title must be taken in condemnation proceedings against land on which dam is to be located. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

In condemnation of state school lands for reservoir, condemnor may take fee simple title, but he is not compelled to. Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

Limitation of Time of Use.

Where condemnor will not use logging road more than year, court will limit use of property taken. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Public Use in General.

The district court, or judge thereof, has jurisdiction to determine the right and necessity for the exercise of the right of eminent domain; and if, on a hearing of an application to appoint commissioners to assess damages, he rejects certain evidence offered in regard to the location of the right of way sought to be condemned, or the necessity thereof, his action may be reviewed on an appeal, but cannot be reviewed on certiorari. Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908).

The courts have the authority to determine the question of the necessary use of lands to the complete development of the material use of resources of the state, since such use is declared to be a public use by the provision of Idaho Const., Art. I, § 14. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Right of way for temporary logging road was "public use." Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

The constitutional provision (Idaho Const., Art. I, § 14) making the use of lands for irrigation and mining purposes a "public use" includes individual uses affected with a public interest. Codd v. McGoldrick Lumber Co., 48 Idaho 1, 279 P. 298 (1929).

RESEARCH REFERENCES

ALR. — Validity of extraterritorial condemnation by municipality. 44 A.L.R.6th 259.

§ 7-703. Private property subject to taking. — The private property which may be taken under this chapter includes:

1. All real property belonging to any person.

2. Lands belonging to the government of the United States, to this state, or to any county, incorporated city, or city and county, village or town, not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in section 7-701[, Idaho Code], and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use, in common with the owners thereof, when necessary, but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and least private injury.

6. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

History.

C.C.P. 1881, § 853; R.S. & R.C., § 5212; am. 1911, ch. 75, § 1, p. 229; reen. C.L., § 5212; C.S., § 7406; I.C.A., § 13-703.

STATUTORY NOTES

Cross References.

Court to regulate common use mentioned in subdivision 5 of this section, § 7-710.

Compiler's Notes.

The bracketed insertion in subdivision 5 was added by the compiler to conform to the statutory citation style.

CASE NOTES

Federal government.

More necessary public use.

Nature of power of eminent domain.

Property already devoted to public use.

Rights of way.

State lands.

Federal Government.

The United States could condemn and acquire land for an irrigation canal right of way and a migratory waterfowl refuge. United States v. Forty Acres, More or Less, of Land, 24 F. Supp. 390 (D. Idaho 1938).

More Necessary Public Use.

Property already devoted to a public use cannot be taken by eminent domain unless the condemnor proposes to put the property to a "more necessary public use," however, the condemnor need not demonstrate a "more necessary public use" when condemning only the right to the common use of an existing right of way previously appropriated for public use. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Where the former owner's use is defeated or seriously impaired, the condemnation amounts to an outright taking rather than an appropriation of concurrent ownership, thereby triggering the greater necessity requirement. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Nature of Power of Eminent Domain.

Private property of all classifications may be taken for public use. Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958).

Since this section of the condemnation statute includes land owned by state in private property subject to taking, the state thereby has given its consent to be sued in condemnation proceedings, and district court had jurisdiction to entertain private individual's action for easement right of way over state land. Petersen v. State, 87 Idaho 361, 393 P.2d 585 (1964).

Property Already Devoted to Public Use.

Use of that portion of railway right of way, which is idle or vacant ground, by telegraph company for erection of telegraph line is of greater public utility than use to which such portion of right of way is put by railroad company and authorizes condemnation thereof by the telegraph company. Postal Tel. Cable Co. v. Oregon Short Line R.R., 104 F. 623 (C.C.D. Idaho 1900), aff'd, 111 F. 842 (9th Cir. 1901).

In suit in equity to compel the joint use of right of way already condemned by another, and to obtain the benefits thereof, on theory that condemnation was made for public use, and that appellants are members of public for whom such condemnation has been adjudged, there being no allegation showing necessity for such common use, and nothing to show that appellants cannot proceed and condemn right of way, the relief prayed for will be denied. Headrick v. Larson, 152 F. 93 (9th Cir. 1907).

Where the effort is to condemn that part of right of way not being actually used as a canal for carrying water, so that a larger canal may be constructed, question as to proposed work being a more necessary public work does not arise. Portneuf Irrigation Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909).

Property held for public use cannot be taken to be used for the same purpose to which it is already being applied, if defeat of that purpose will result. Marsh Mining Co. v. Inland Empire Mining & Milling Co., 30 Idaho 1, 165 P. 1128 (1916).

Property of an electric power cooperative within territory newly annexed to a city was not immune to eminent domain condemnation by such city because of its public use. Unity Light & Power Co. v. City of Burley, 92 Idaho 499, 445 P.2d 720 (1968).

Rights of Way.

Rights of way may be condemned for the purposes of concurrent use in common with the existing owners; in such cases, the original easement owner is not really being deprived of his easement outright, only of its exclusive use, and the condemnation imposes a form of concurrent ownership where both the condemnor and condemnee will enjoy the right to use the easement. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

State Lands.

This section authorizes action in district court to condemn state lands for public use. Hollister v. State, 9 Idaho 8, 71 P. 541 (1903); Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

The effect of the "consent" given by this section was to render the state a private property owner for purposes of eminent domain condemnation actions, and, if the legislature had wished that the state not stand in that posture with respect to the old soldiers' home property, it would have used clear and explicit language to achieve that end. County of Ada v. State, 93 Idaho 830, 475 P.2d 367 (1970).

Cited Washington Water Power Co. v. Waters, 186 F. 572 (C.C.D. Idaho 1910); Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908); Codd v. McGoldrick Lumber Co., 48 Idaho 1, 279 P. 298 (1929); State ex rel. McKelvey v. Barnes, 51 Idaho 578, 45 P.2d 293 (1932).

§ 7-704. Facts prerequisite to taking. — Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

4. In addition, for an electrical transmission line with a capacity in excess of two hundred thirty (230) KV (kilovolts), to be constructed over private real property actively devoted to agriculture, that a public meeting shall have been held following ten (10) days' notice, as provided by section 60-109, Idaho Code, being published in a newspaper of general circulation in each county or counties in which the transmission line is proposed to be located with the last publication of the legal notice having occurred prior to the public meeting at which testimony from interested persons regarding the transmission line location is received.

History.

C.C.P. 1881, § 854; R.S., R.C., & C.L., § 5213; C.S., § 7407; I.C.A., § 13-704; am. 1983, ch. 115, § 1, p. 246.

CASE NOTES

Indian land.

Interest allowed.

Necessity.

Public use.

Subsequent condemnation.

Indian Land.

Suit to determine the validity of the order of the United States district court of the district of Idaho decreeing condemnation of an easement for the construction and maintenance of an electric transmission line over and

along a portion of a tract of land which was allotted in severalty to an enrolled member of an Indian tribe, the title to which land is held in trust for such member by the United States, was brought and the procedure followed by the district court, in accordance with Idaho law, this section, and the federal rules of civil procedure. Nicodemus v. Washington Water Power Co., 264 F.2d 614 (9th Cir. 1959).

Interest Allowed.

The condemnee should be allowed interest upon the compensation and damages awarded from the time the condemnor either takes possession, or becomes entitled to possession, of the property. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

Where the order for possession in a condemnation proceeding was filed March 29, 1955, interest would be allowed at the legal rate from such date rather than from the date of May 15, 1951, which was the date of the institution of proceedings, plaintiff being unable to take possession of the property until such first mentioned date in 1955 due to litigation on part of the owners but interest would only be recoverable from the time that the order for possession was filed. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

Necessity.

Use, necessity, and other requirements of this section should be tried and found by court before commissioners are appointed. Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909); Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910).

After court has determined use is public use, question of extent of enterprise and necessity for taking should be left in large measure to judgment and discretion of agency seeking condemnation. Washington Water Power Co. v. Waters, 19 Idaho 595, 115 P. 682 (1911); Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925).

The use of land necessary to the complete development of the material resources of the state is declared by Idaho Const., Art. I, § 14 to be a public use. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Question of necessity is one of fact, and findings based on substantial conflict in evidence will not be disturbed. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Necessity is not measured by extent to which use is applied. Property devoted to or held for public use is subject to power of eminent domain if right is given by constitutional provision or legislative enactment; but it cannot be taken to be used in same manner and for same purpose to which it is already applied or held if by so doing that purpose will be defeated. Marsh Mining Co. v. Inland Empire Mining & Milling Co., 30 Idaho 1, 165 P. 1128 (1916).

If reasonable but not absolute necessity exists to take property for public use, it is sufficient. Marsh Mining Co. v. Inland Empire Mining & Milling Co., 30 Idaho 1, 165 P. 1128 (1916); Grangeville Hwy. Dist. v. Ailshie, 49 Idaho 603, 290 P. 717 (1930).

Determination of necessity of taking particular piece of land sought is ultimately a judicial question on which defendant is entitled to a hearing. Grangeville Hwy. Dist. v. Ailshie, 49 Idaho 603, 290 P. 717 (1930).

Under this statute, the condemner must first establish that the taking is necessary to the intended use and since this gives the property owner the right to litigate that issue, he should not be penalized for so doing. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

The fact that the plaintiffs' existing access was by way of a license, rather than an easement across the land of other adjoining property owners, does not destroy either the evidence or the finding of the court that alternative access routes existed nor the trial court's holding based thereon that necessity for condemnation did not exist. Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978).

Where landowners specifically alleged that the condemnors had alternative means of access and produced evidence of such alternative means of access, including one road then in use by the condemnors pursuant to a license agreement, it was then incumbent upon the condemnors to prove that the alternative means of access were not available

to them or that such means of access were not reasonably adequate or sufficient for their purposes. Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978).

Condemnation of an easement to construct a pipeline for irrigation purposes, a beneficial use, was authorized and reasonably necessary to reduce conveyance losses. Telford Lands LLC v. Cain, 154 Idaho 981, 303 P.3d 1237 (2013).

Public Use.

Where no public use was associated with right-of-way to public highway sought by lot owners, eminent domain was not the appropriate remedy to settle purely private dispute. Cohen v. Larson, 125 Idaho 82, 867 P.2d 956 (1993).

Subsequent Condemnation.

This section, by implication, authorizes a second condemnation, and under it a telegraph company may condemn right of way for its line over right of way of railroad, where court finds that it is necessary and that it will not interfere with use of the property for the purpose of railroad, and that the second use is more necessary than the first. Oregon Short Line R.R. v. Postal Tel. Cable Co., 111 F. 842 (9th Cir. 1901); Pacific Postal Telegraph-Cable Co. v. Oregon & C.R.R., 163 F. 967 (D. Or. 1908).

This section authorizes annexation by a city of property of an electric power cooperative within territory newly annexed to the city because the use by the municipal corporation was a more necessary one than the use by a private corporation. Unity Light & Power Co. v. City of Burley, 92 Idaho 499, 445 P.2d 720 (1968).

Property already devoted to a public use cannot be taken by eminent domain unless the condemnor proposes to put the property to a more necessary public use, however, the condemnor need not demonstrate a more necessary public use when condemning only the right to the common use of an existing right of way previously appropriated for public use. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Where the former owner's use is defeated or seriously impaired, the condemnation amounts to an outright taking rather than an appropriation of concurrent ownership, thereby triggering the greater necessity requirement. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Cited Washington Water Power Co. v. Waters, 186 F. 572 (C.C.D. Idaho 1910); Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908); Erickson v. Amoth, 112 Idaho 1122, 739 P.2d 421 (Ct. App. 1987).

§ 7-704A. Acquisition of omitted lands — Escrow of funds. — (1) The state of Idaho, or any of its political subdivisions, in excercising [exercising] its powers of eminent domain, shall acquire and pay full value for all lands classified as omitted lands under federal legislation as though the state of Idaho or any political subdivision thereof were receiving fee simple title.

(2) The state of Idaho or any political subdivision thereof shall be entitled to escrow the funds for the acquisition of the omitted lands until a letter of acquiescence or other documentation is received from the federal government, at which time all of the funds shall be remitted to the landholder.

History.

I.C., § 7-704A, as added by 1982, ch. 125, § 1, p. 361.

STATUTORY NOTES

Cross References.

Condemnation of rights-of-way for public highway, § 40-606.

Compiler's Notes.

The bracketed word "exercising" was inserted by the compiler.

§ 7-705. Survey and location of land. — In all cases where land is required for public use the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter. The state or its agents in charge of such public use, may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause for action in favor of the owners of the land, except for injuries resulting from negligence, wantonness or malice.

History.

C.C.P. 1881, § 855; R.S., R.C., & C.L., § 5214; C.S., § 7408; I.C.A., § 13-705.

CASE NOTES

Cited Washington Water Power Co. v. Waters, 186 F. 572 (C.C.D. Idaho 1910); Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908); Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925); Grangeville Hwy. Dist. v. Ailshie, 49 Idaho 603, 290 P. 717 (1930); State ex rel. McKelvey v. Barnes, 55 Idaho 578, 45 P.2d 293 (1935).

§ 7-706. Jurisdiction in district court — Commencement of proceedings. — All proceedings under this chapter must be brought in the district court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

History.

C.C.P. 1881, § 856; R.S., R.C., & C.L., § 5215; C.S., § 7409; I.C.A., § 13-706.

STATUTORY NOTES

Cross References.

Commencement of actions, Idaho R. Civ. P. 3(a).

CASE NOTES

Immunity of state.

State surveys presumed correct.

Immunity of State.

Where the state inflicts permanent and irreparable injury on land without making any compensation, there is a taking contrary to the provisions of the Idaho Const., Art. I, § 14, and a suit to recover damages for such injury is, in essence, a condemnation proceeding in reverse, and the immunity of the state from suit is waived. Renninger v. State, 70 Idaho 170, 213 P.2d 911 (1950).

State Surveys Presumed Correct.

Acts of state or its agents in surveying and locating land to be taken should, in absence of evidence to contrary, be presumed correct and lawful. Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925).

Cited Washington Water Power Co. v. Waters, 186 F. 572 (C.C.D. Idaho 1910); Weiser Valley Land & Water Co. v. Ryan, 190 F. 417 (9th Cir. 1911); Portneuf Irrigation Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909);

Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916); Southside Water & Sewer Dist. v. Murphy, 97 Idaho 881, 555 P.2d 1148 (1976); Union Pac. R.R. v. Idaho, 654 F. Supp. 1236 (D. Idaho 1987).

RESEARCH REFERENCES

ALR. — Evidentiary effect of view by jury in condemnation case. 1 A.L.R.3d 1397.

Depreciation in value, from project for which land is condemned, as a factor and fixing compensation. 5 A.L.R.3d 901.

How to obtain jury trial in eminent domain, waiver. 12 A.L.R.3d 7.

Propriety and effect, in eminent domain proceeding, of argument or evidence as to landowner's unwillingness to sell property. 17 A.L.R.3d 1449.

Propriety and effect, in eminent domain proceeding, of argument or evidence as to source of funds to pay for property. 19 A.L.R.3d 694.

Propriety and effect, in eminent domain proceeding, of instruction to the jury as to landowner's unwillingness to sell property. 20 A.L.R.3d 1081.

Charging landowner with rent or use value of land where he remains in possession after condemnation. 20 A.L.R.3d 1164.

Propriety and effect of argument or evidence as to financial status of parties in eminent domain proceeding. 21 A.L.R.3d 936.

Admissibility, on issue of value of condemned real property, of rental value of other real property. 23 A.L.R.3d 724.

Admissibility of photographs or models of property condemned. 23 A.L.R.3d 825.

Admissibility of evidence of proposed or possible subdivision or platting of condemned land on issue of value in eminent domain proceedings. 26 A.L.R.3d 780.

Right to enter land for preliminary survey or examination. 29 A.L.R.3d 1104.

Payment or deposit of award in court as affecting condemnor's right to appeal. 40 A.L.R.3d 203.

Good will or "going concern" value as element of lessee's compensation for taking leasehold in eminent domain. 58 A.L.R.3d 566.

What constitutes abandonment of eminent domain proceedings so as to charge condemnor with liability for condemnee's expenses or the like. 68 A.L.R.3d 610.

Eminent domain: measure and elements of lessee's compensation for condemnor's taking or damaging of leasehold. 17 A.L.R.4th 337.

Fear of powerline, gas or oil pipeline, or related structure as element of damages in easement condemnation proceeding. 23 A.L.R.4th 631.

Eminent domain: compensability of loss of view from owner's property — state cases. 25 A.L.R.4th 671.

Eminent domain: unity or contiguity of separate properties sufficient to allow damages for diminished value of parcel remaining after taking of other parcel. 59 A.L.R.4th 308.

Measure of damages or compensation in eminent domain as affected by premises being restricted to particular educational, religious, charitable, or noncommercial use. 29 A.L.R.5th 36.

Jury trial under Rule 71A(h) of Federal Rules of Civil Procedure (Fed. Rules Civ. Proc., Rule 71A(h), 28 U.S.C.S.) in condemnation proceedings by United States. 164 A.L.R. Fed. 341.

§ 7-707. Complaint. — The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right-of-way be sought, the complaint must show the location, general route and termini, and must be accompanied with maps thereof.

5. A description of each piece of land sought to be taken, and whether the same includes the whole, or only a part, of an entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

6. An order of condemnation, or resolution, or other official and binding document entered by the plaintiff which sets forth and clearly identifies all property rights to be acquired including rights to and from the public way, and permanent and temporary easements known or reasonably identifiable to the condemning authority.

7. In all cases where the owner of the lands sought to be taken resides in the county in which said lands are situated, a statement that the plaintiff has sought, in good faith, to purchase the lands so sought to be taken, or settle with the owner for the damages which might result to his property from the taking thereof, and was unable to make any reasonable bargain therefor, or settlement of such damages; but in all other cases these facts need not be alleged in the complaint, or proved.

History.

C.C.P. 1881, § 857; R.S., § 5216; am. 1907, p. 322, § 1; reen. R.C. & C.L., § 5216; C.S., § 7410; I.C.A., § 13-707; am. 2006, ch. 450, § 1, p. 1339.

STATUTORY NOTES

Cross References.

Contents of complaint in actions in district court, Idaho R. Civ. P. 7(a) et seq.

Amendments.

The 2006 amendment, by ch. 450, added subdivision 6 and redesignated former subdivision 6 as subsection 7.

CASE NOTES

Burden of proof.

Construction with other statutes.

Description of land.

Designation of owners.

Evidence.

Nature of condemnation proceeding.

Offer to purchase.

Order of condemnation not determinative.

Parties.

Purpose of condemnation.

Sufficiency in general.

Burden of Proof.

Where landowners specifically alleged that the condemnors had alternative means of access and produced evidence of such alternative means of access, including one road then in use by the condemnors pursuant to a license agreement, it was then incumbent upon the condemnors to prove that the alternative means of access were not available to them or that such means of access were not reasonably adequate or sufficient for their purposes. Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978).

Construction With Other Statutes.

While neither this section nor § 40-1310 purport to state whether it is the order of condemnation or the complaint initiating the eminent domain action that is determinative in defining what land or what rights are sought to be condemned, this section is more specific and, thus, controlling. Ada County Hwy. Dist. v. Sharp, 135 Idaho 888, 26 P.3d 1225 (Ct. App. 2001).

Description of Land.

In action brought to condemn right of way through a farm or a legal subdivision, such right of way should be described in complaint by such subdivision; but in action to condemn right of way on established railroad right of way, locus of which is accurately fixed by survey of which there are accessible records, complaint is sufficiently specific when it describes railroad right of way in general terms, giving the termini and the counties through which it runs. Postal Tel. Cable Co. v. Oregon Short Line R.R., 104 F. 623 (C.C.D. Idaho 1900), aff'd, 111 F. 842 (9th Cir. 1901).

Description of land sought to be taken for public use must be such that from it the number of square feet, yards, or rods or the number of acres sought to be taken may be ascertained. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

Designation of Owners.

Complaint in condemnation proceedings which fails to allege that defendants are the owners of land sought to be taken, or that names of the owners are unknown, is fatally defective. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

Evidence.

By default, a defendant admits all of the allegations of the complaint that seeks condemnation, including facts shown by a map and annexed to and made a part of the complaint by reference as an exhibit, as well as the allegations found in the body of the complaint. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

Evidence will be liberally admitted in a proceeding to condemn property for a highway, and the broadest latitude should be allowed in the admission

of evidence to show the value of property. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

In a proceeding to condemn property for a highway, evidence of rental, position, and accessibility of the property to railroad, and most valuable possible use; evidence of property's location and the flow of traffic near it; evidence of zoning ordinance restricting use of surrounding property; and evidence as to the structural and reproduction costs and value of buildings on the land was admissible to determine the market value of the entire property. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

In a proceeding to condemn property for a highway, photographs of the property are admissible in the evidence. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

In a proceeding to condemn property for a highway, evidence of the price paid for the property when purchased from an estate was inadmissible since such sale was in the nature of a forced sale and not pertinent in proving the market value; nor was evidence of the amount of assessed value for tax purposes admissible since the amount did not prove the market value. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

The fact that the plaintiffs' existing access was by way of a license, rather than an easement across the land of other adjoining property owners, does not destroy either the evidence or the finding of the court that alternative access routes existed, nor the trial court's holding based thereon that necessity for condemnation did not exist. Erickson v. Amoth, 99 Idaho 907, 591 P.2d 1074 (1978).

Nature of Condemnation Proceeding.

The district court or judge thereof has jurisdiction to determine the right and necessity for the exercise of the right of eminent domain; and if, on a hearing of an application to appoint commissioners or assess damages, he rejects certain evidence offered in regard to the location of the right of way sought to be condemned or the necessity thereof, his action may be reviewed on an appeal, but cannot be reviewed on certiorari. Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908).

Action in condemnation is purely an action to determine value of property sought to be taken. No title can pass to condemnor until after

payment of value of the property has been made. Ryan v. Weiser Valley Land & Water Co., 20 Idaho 288, 118 P. 769 (1911).

Offer to Purchase.

The supreme court did not agree with the contention of the state in a condemnation proceeding that the mere act of making a good faith offer to an owner by letter was sufficient to satisfy the requirements of this section. State ex rel. Rich v. Bair, 83 Idaho 475, 365 P.2d 216 (1961).

Where the evidence showed that plaintiff power company was building a 230 kv high tension power transmission line and needed a three-quarters of a mile right-of-way across defendants' land to erect three self-supporting double circuit steel towers in connection with that project, that plaintiff made some 20 contacts over a period of 13 months in an attempt to purchase the right-of-way, that plaintiff had two independent appraisals of the land made in addition to its own, and referred defendants to two other appraisers, that plaintiffs offered the defendants the top appraisal figure after making several upward adjustments based upon possible future commercial potential, and that defendants consistently refused while failing to offer any other appraisal in support of their position, the trial court correctly held that plaintiff had satisfied the requirements of this section. Idaho Power Co. v. Lettunich, 100 Idaho 582, 602 P.2d 540 (1979).

The good faith negotiations requirement of this section was met, even if the negotiations did not occur until after the installation of an irrigation pipeline. However, a good faith effort to resolve the dispute must only be made prior to the filing of a lawsuit. Telford Lands LLC v. Cain, 154 Idaho 981, 303 P.3d 1237 (2013).

Order of Condemnation Not Determinative.

Where no access was being condemned because property owner's rights of access to the road were unchanged by the highway district's actions, the order of condemnation was not determinative to defining the scope of the take and property owner's access rights were not altered by the highway district's actions. Ada County Hwy. Dist. v. Sharp, 135 Idaho 888, 26 P.3d 1225 (Ct. App. 2001).

Parties.

In condemnation proceedings, all persons claiming easements in property sought to be condemned should be made parties. Lewiston v. Brinton, 41 Idaho 317, 239 P. 738 (1925).

Purpose of Condemnation.

Condemnor must disclose purpose for which he is seeking to condemn property and the general nature and character of the improvement or structure he expects to erect to entitle him to maintain his condemnation proceedings. Idaho-Western R.R. v. Columbia Conference Synod, 20 Idaho 568, 119 P. 60 (1911).

Sufficiency in General.

Complaint in condemnation proceedings must substantially comply with requirements of this section, but, in ascertaining whether or not there is such compliance, the same rule will be applied as in consideration of sufficiency of other pleadings. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

Unless complaint in condemnation proceedings contains substantially every fact required by this section, court acquires no jurisdiction over defaulting defendant. Hollister v. State, 9 Idaho 651, 77 P. 339 (1904).

In condemnation proceedings by the state to acquire a right of way for a highway, an allegation that the state tried in good faith to purchase the property was sufficient to support proceedings where a municipality, which had contracted jointly with the state for the construction of the highway necessitating the condemnation, had tried in good faith to purchase the property. State v. Styner, 58 Idaho 233, 72 P.2d 699 (1937).

The requirements of this section are not to be lightly regarded and must be satisfied before an action in eminent domain may be entertained. State ex rel. Rich v. Bair, 83 Idaho 475, 365 P.2d 216 (1961).

When applicable, this section requires an allegation by the plaintiff of two items; first, that plaintiff sought in good faith to purchase the property and settle for severance damages; second, that plaintiff was unable to make any reasonable bargain therefor, or settlement of such damages. State ex rel. Rich v. Bair, 83 Idaho 475, 365 P.2d 216 (1961).

In an action by a water and sewer district to condemn an easement for a sewer line, where appraiser testified that in his opinion the district's offer was for the maximum value of an easement over the land based on studies of comparable utility easements, and where landowners had informed the district that they did not want any easement on their property, there was substantial evidence to support the district court's finding that the district had negotiated in good faith. Southside Water & Sewer Dist. v. Murphy, 97 Idaho 881, 555 P.2d 1148 (1976).

The director of the Idaho transportation board has the power to sign an order of condemnation on behalf of the board. Such an order is deemed "entered" under this section. State DOT v. HJ Grathol, 153 Idaho 87, 278 P.3d 957 (2012).

Cited Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910); Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912); Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916); State ex rel. Moore v. Howell, 111 Idaho 963, 729 P.2d 438 (Ct. App. 1986); State ex rel. Moore v. Howell, 111 Idaho 963, 729 P.2d 438 (Ct. App. 1986).

§ 7-708. Summons. — The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner.

History.

C.C.P. 1881, § 858; R.S., R.C., & C.L., § 5217; C.S., § 7411; I.C.A., § 13-708.

STATUTORY NOTES

Cross References.

Form and service of summons, Idaho Civil Procedure Rules 4(d)(1) through 4(e)(2).

CASE NOTES

Cited Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910); Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916).

§ 7-709. Persons entitled to defend. — All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint.

History.

C.C.P. 1881, § 859; R.S., R.C., & C.L., § 5218; C.S., § 7412; I.C.A., § 13-709.

CASE NOTES

Failure to Join Interested Parties.

Plaintiffs in condemnation proceeding having actual knowledge of appellants' interest in property, it was incumbent on them to join appellants as parties defendant so that the latter might present their case to the trial court; upon their failure to do so, it was an abuse of discretion for the trial court to refuse to set aside appellants' default, reopen the case and permit appellants to submit proof, including presentation of evidence as to severance damages. Rich v. Wylie, 84 Idaho 58, 367 P.2d 763 (1962).

Cited State ex rel. McKelvey v. Barnes, 55 Idaho 578, 45 P.2d 293 (1935).

§ 7-710. Powers of court. — The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 7-703[, Idaho Code].

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

History.

C.C.P. 1881, § 860; R.S., R.C., & C.L., § 5219; C.S., § 7413; I.C.A., § 13-710.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subdivision 1 was added by the compiler to conform to the statutory citation style.

CASE NOTES

Cited State ex rel. McKelvey v. Barnes, 55 Idaho 578, 45 P.2d 293 (1935); Union Pac. R.R. v. Idaho, 654 F. Supp. 1236 (D. Idaho 1987).

§ 7-711. Assessment of damages. — The court, jury or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed. For purposes of ascertaining the value of the property, the minimum amount for damages shall be the greater of the assessed value for property tax purposes unless the court, jury or referee finds the property has been altered substantially, or the plaintiff's highest prelitigation appraisal.

2. If the property sought to be condemned constitutes only a part of a larger parcel: (a) the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff; and (b) the damages to any business qualifying under this subsection having more than five (5) years' standing which the taking of a portion of the property and the construction of the improvement in the manner proposed by the plaintiff may reasonably cause. The business must be owned by the party whose lands are being condemned or be located upon adjoining lands owned or held by such party. Business damages under this subsection shall not be awarded if the loss can reasonably be prevented by a relocation of the business or by taking steps that a reasonably prudent person would take, or for damages caused by temporary business interruption due to construction; and provided further that compensation for business damages shall not be duplicated in the compensation otherwise awarded to the property owner for damages pursuant to subsections (1) and (2)(a) of this section 7-711, Idaho Code.

(i) If the business owner intends to claim business damages under this subsection, the owner, as defendant, must submit a written business damage claim to the plaintiff within ninety (90) days after service of the summons and complaint for condemnation. The plaintiff's initial offer letter or accompanying information must expressly inform the defendant

of its rights under this subsection, and must further inform the defendant of its right to consult with an attorney.

(ii) The defendant's written claim must be sent to the plaintiff by certified mail, return receipt requested. Absent a showing of a good faith justification for the failure to submit a business damage claim within ninety (90) days, or an agreed extension by the parties, the court shall strike the defendant's claim for business damages in any condemnation proceeding.

(iii) The business damage claim must include an explanation of the nature, extent, and monetary amount of such claimed damages and must be prepared by the owner, a certified public accountant, or a business damage expert familiar with the nature of the operations of the defendant's business. The defendant shall also provide the plaintiff with copies of the defendant's business records that substantiate the good faith offer to settle the business damage claim. The business damage claim must be clearly segregated from the claim for property damages pursuant to subsections (1) and (2)(a) of this section 7-711, Idaho Code.

(iv) As used in this subsection, the term "business records" includes, but is not limited to, copies of federal and state income tax returns, state sales tax returns, balance sheets, and profit and loss statements for the five (5) years preceding which are attributable to the business operation on the property to be acquired, and other records relied upon by the business owner that substantiate the business damage claim.

(v) The plaintiff's good faith in failing to offer compensation for business damages shall not be contested at a possession hearing held pursuant to section 7-721, Idaho Code, if the defendant has not given notice of its intent to claim business damages prior to the date of filing of the motion that initiates the proceeding under that section.

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be specially and directly benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under subsection 2. of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the

damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

5. As far as practicable, compensation must be assessed for each source of damages separately.

6. If the property sought to be condemned is private real property actively devoted to agriculture, the damages which will accrue because of the costs, if any, of farming around electrical transmission line structure(s) for a transmission line with a capacity in excess of two hundred thirty (230) kilovolts. If the property sought to be condemned has been the subject of a previous condemnation proceeding or proceedings for electrical transmission line structure(s) and at the time of condemnation the field holds other electrical transmission line structure(s), such evidence of costs referred to above may also include the cumulative effects, if any, of conducting farming operations around other electrical transmission line structure(s) in the same field, whether such structure(s) are of the condemner or not.

History.

C.C.P. 1881, § 861; R.S., R.C., & C.L., § 5220; C.S., § 7414; I.C.A., § 13-711; am. 1983, ch. 115, § 2, p. 246; am. 1998, ch. 427, § 1, p. 1345; am. 2000, ch. 346, § 1, p. 1170; am. 2006, ch. 452, § 1, p. 1343.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 452, in subsection 1, substituted "minimum amount for damages shall be the greater of the assessed value" for "shall be used as the minimum amount for damages" and inserted "or the plaintiff's highest prelitigation appraisal".

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Attorney fees.

Burden of proof.

Business damages.

Compensatory benefits.

Damages to portion not taken.

Fixtures.

Judgment.

Larger parcel.

Loss of visibility.

Measure of damages.

Nature of condemnation proceeding.

Prospective future interference.

Separate parcels.

Special benefits.

Special verdict.

Value.

Attorney Fees.

The basis for the discretionary award of attorney fees to the condemnee without a showing and finding that the action was brought frivolously or unreasonably is that, otherwise, a condemnee who is determined by the trial court to be a prevailing party will be deprived of part of the just compensation to which he is entitled. State ex rel. Smith v. Jardine, 130 Idaho 318, 940 P.2d 1137 (1997).

Burden of Proof.

The burden of proving just compensation is borne by the landowner. Conclusory assertions and denials of a utility's pleadings on the value of the

property are not sufficient. Rocky Mt. Power v. Jensen, 154 Idaho 549, 300 P.3d 1037 (2012).

Business Damages.

Intervenors were entitled to make a claim for business damages, because one business was effectively owned by the owners, the other business was located on a remaining portion of the owners' property, which was immediately adjacent to the condemned land, and the intervenors had been on the owners' property for over five years. City of McCall v. Seubert, 142 Idaho 580, 130 P.3d 1118 (2006).

There was no reason that the relocation expenses should not be included as part of the business damages, because they were reasonably caused by the taking, when the relocation costs awarded by the jury included the cost of moving the business operations to other portions of the property and the expense of widening the city's roadway to include additional lanes so that trucks could access the property safely, which became necessary because of the 11-foot drop between the city's new roadway and the surrounding property. City of McCall v. Seubert, 142 Idaho 580, 130 P.3d 1118 (2006).

In an inverse condemnation action based on the state's decision to acquire a portion of defendant's property for a highway improvement project, the district court correctly dismissed defendant's inverse condemnation claim and request for business damages. Defendant's claims based on restricted traffic flow and the reduced visibility of its hotel were not compensable takings under Idaho law, as it was undisputed that motorists still had free access to and from defendant's property. State v. HI Boise, LLC, 153 Idaho 334, 282 P.3d 595 (2012).

Compensatory Benefits.

Under this section increased transportation facilities are not special and direct benefits to land not taken. Benefits which may be set off against lands not sought to be condemned must be such as relate to land and not to owner. Tyson Creek R.R. v. Empire Mill Co., 31 Idaho 580, 174 P. 1004 (1918).

Damages to Portion Not Taken.

Damages for land not taken, caused by construction outside land of defendants, cannot be considered by jury. Oregon-Washington R.R. & Nav. Co. v. Campbell, 34 Idaho 601, 202 P. 1065 (1921).

While reasonable market value of property sought to be taken is true measure of damages for part taken, jury should also be instructed on damages which might accrue to maintain portion of land not sought to be condemned. Lewiston v. Brinton, 41 Idaho 317, 239 P. 738 (1925).

Where a part of the owner's contiguous land is taken in a condemnation proceeding, all inconveniences resulting to the owner's remaining land, including an easement of access to a road or right of way formerly enjoyed, which decrease the value of the land retained by the owner, are elements of severance damage for which compensation should be paid. State ex rel. Rich v. Fonburg, 80 Idaho 269, 328 P.2d 60 (1958).

This section makes it the mandatory duty of the court, jury or referee to ascertain and assess the value of the property sought to be condemned; and, if such property constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of the severance, and the construction of any improvement, likewise must be ascertained and assessed. Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958).

The private landowner is entitled to damages accruing to property not taken by reason of the severance and the construction of any improvement. State ex rel. Symms v. Thirteenth Judicial Dist., 91 Idaho 237, 419 P.2d 679 (1966).

Fixtures.

It is incumbent upon a condemnor to designate clearly, and establish by competent evidence, which particular items are claimed as fixtures, so that no issue can later arise as to the inclusion or exclusion of these items. State ex rel. Flandro v. Seddon, 94 Idaho 940, 500 P.2d 841 (1972).

Judgment.

Upon damages being assessed by court, jury, or referee, under provisions of this section, judgment should be rendered by court in the common, ordinary form for recovery of money in favor of defendant against plaintiff, where damages are allowed and such judgment is the final judgment mentioned in § 7-714, and is a judgment in personam against plaintiff for such damages. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

In the light of the agreement and stipulation that the court in an eminent domain proceeding should determine the freeboard area and estimate the value thereof taken by the irrigation district and the severance damages, the irrigation district's assignment of error that the ruling of the trial court required condemnation to a higher elevation than sought was without merit as the court by such agreement and stipulation was required to make a finding on the extent of the area to be taken and necessity for taking whereupon the district's pleadings were deemed amended. Big Lost River Irrigation Dist. v. Zollinger, 83 Idaho 401, 363 P.2d 706 (1961).

Larger Parcel.

The fact that land taken in condemnation proceedings is not being used for the same purpose as the remaining land does not mean that the land taken and the land remaining do not constitute parts of a "larger parcel" within the meaning of this section. State ex rel. Symms v. Mountain Home, 94 Idaho 528, 493 P.2d 387 (1972).

Loss of Visibility.

Loss of visibility is not a compensable property right for a business in and of itself, unless some of the improvements alleged to obstruct visibility are located on land taken from the business through condemnation. State v. HI Boise, LLC, 153 Idaho 334, 282 P.3d 595 (2012).

Measure of Damages.

In proceedings for the condemnation of land for railroad purposes, the value of the land at the time it is taken is the measure of damages, and it is error to admit evidence of value at the time of trial. Spokane & Palouse Ry. v. Lieuallen, 3 Idaho 381, 29 P. 854 (1892).

This section contemplates assessment of damages upon basis of the market value of property sought to be condemned. Portneuf-Marsh Valley Irrigating Co. v. Portneuf Irrigating Co., 19 Idaho 483, 114 P. 19 (1911); Tyson Creek R.R. v. Empire Mill Co., 31 Idaho 580, 174 P. 1004 (1918); Oregon-Washington R. & Nav. Co. v. Campbell, 34 Idaho 601, 202 P. 1065 (1921); Idaho Farm Dev. Co. v. Brackett, 36 Idaho 748, 213 P. 696 (1923); Lewiston v. Brinton, 41 Idaho 317, 239 P. 738 (1925).

Measure of damages where property of educational institution is taken for railroad purposes, see Idaho-Western R.R. v. Columbia Conference

Synod, 20 Idaho 568, 119 P. 60 (1911).

Noise usually incident to operation of railway trains should not be taken into consideration as elements of damages in ordinary condemnation cases; but where property is already devoted to such a special use and, a portion only being taken, noise will be a private nuisance as to remainder, it will be considered in ascertaining damages to remainder. Idaho-Western R.R. v. Columbia Conference Synod, 20 Idaho 568, 119 P. 60 (1911).

Full compensation shall be paid for all lands taken for a public use. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Just compensation must be awarded, whether property has market value or not. Idaho Farm Dev. Co. v. Brackett, 36 Idaho 748, 213 P. 696 (1923).

Compensation must be reckoned from standpoint of what landowner loses by taking of property and not from benefit property may be to condemnor, and it is error to admit evidence of necessities of latter and value of property to him for purposes for which he intends to apply it. Idaho Farm Dev. Co. v. Brackett, 36 Idaho 748, 213 P. 696 (1923).

If the jury does not find from the evidence that any actual damage results, nominal damages need not be returned. Bassett v. Swenson, 51 Idaho 256, 5 P.2d 722 (1931).

The defendant in a condemnation suit is entitled to be paid in money for the value of the land taken and for the damage to the land not taken because of the severance. State ex rel. Rich v. Dunclick, Inc., 77 Idaho 45, 286 P.2d 1112 (1955).

The state in a condemnation proceeding for taking of land of manufacturing concern used as storage by the defendant was not entitled to contend that there was available to the defendant for storage other state owned land, since the defendant was entitled to cash for the damage sustained by it and was not required to take other land in exchange. State ex rel. Rich v. Dunclick, Inc., 77 Idaho 45, 286 P.2d 1112 (1955).

The power of eminent domain extends to every kind of property taken for public use, including the right of access to public streets, such being an estate or interest in and appurtenant to real property; and since such right of access constitutes an interest in, by virtue of being an easement appurtenant

to, a larger parcel, the court must ascertain and assess the damages which will accrue to the portion not sought to be condemned by reason of the severance of the portion — the right of access — sought to be condemned and the construction of the improvement. Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958).

In an eminent domain proceeding, it is the mandatory duty of the court, jury or referee to assess the value of the property sought to be condemned, and if such property constitutes a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of the severance, and the construction of any improvement in the manner proposed by the condemnor, likewise must be ascertained and assessed. Big Lost River Irrigation Dist. v. Zollinger, 83 Idaho 401, 363 P.2d 706 (1961).

In an eminent domain proceeding where expert witnesses were of the opinion that the land taken by the improvement would cause a reduction by the amount of land taken in the animal units of feed produced thus reducing the animal carrying capacity of the ranch, such reduction, resulting in a loss of at least $7,000 annually, was a damage that must be ascertained and assessed. Big Lost River Irrigation Dist. v. Zollinger, 83 Idaho 401, 363 P.2d 706 (1961).

Where the court's findings specifically set out each item of property taken and the value thereof, but do not delineate whether the various items of damage constituted valuations for property taken or severance damages, any error in the form of such damages was rendered harmless by the court's conclusion of law to the effect that the owners were entitled to judgment for $5,222. State ex rel. Burns v. Blair, 91 Idaho 137, 417 P.2d 217 (1966).

To permit the state to offset the benefits to the remainder of land taken by condemnation against the value of the land taken where land taken constituted an independent economic unit, would be contrary to Idaho Const., Art. I, § 14 as denying the owner just compensation. Orofino v. Swayne, 95 Idaho 125, 504 P.2d 398 (1972).

Although damages assessed in a condemnation action include the value of the improvements pertaining to the realty, supreme court could not determine whether alleged fixtures removed by condemnee were considered by the jury in arriving at its award in the absence of findings by the trial court or a proper jury instruction, and condemnor was not entitled to the

alleged fixtures. State ex rel. Flandro v. Seddon, 94 Idaho 940, 500 P.2d 841 (1972).

The state is required to pay just compensation for the value of land taken through eminent domain and for any damages caused to other property by the severance; however, the compensation is not affected by land which is taken or damaged due to the exercise of police powers or land which may be divided among persons with various interests including leaseholds. State ex rel. Moore v. Bastian, 97 Idaho 444, 546 P.2d 399 (1976).

Corporation's counsel indicated only a small fraction of the total damages awarded by the jury were for value of the actual property taken, even though a substantial amount of the damages were due to severance of the corporation's property; although severance damages could be estimated before a taking occurred, they could be more accurately and satisfactorily determined after completion of construction. C & G, Inc. v. Canyon Highway Dist. No. 4, 139 Idaho 140, 75 P.3d 194 (2003).

Paragraph (2)(a) provides that, following the taking of a parcel of land through eminent domain, just compensation includes any decrease in the value of remaining property based on the future existence of any planned improvements to the taken property and the planned uses of those improvements. Just compensation does not include any physical damages that accrue to the remaining property during the construction of any improvements on the taken property. Claims for such damages must be brought in tort. Ada Cty. Highway Dist. v. Brooke View, Inc., 162 Idaho 138, 395 P.3d 357 (2017).

Nature of Condemnation Proceeding.

Action in condemnation is purely action to determine value of property sought to be taken. Ryan v. Weiser Valley Land & Water Co., 20 Idaho 288, 118 P. 769 (1911).

It is the duty of court, jury, or referee, before whom a hearing is had, to ascertain and assess damages under provisions of this section, and to make findings upon each of the elements of damages as described herein; in assessing such damages, if the benefits shall be less than the damages so assessed, the benefits should be deducted from the damages. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

Prospective Future Interference.

When an easement owner loses the exclusive right to use his easement, he may well be damaged by the prospective future interference with his use, even if such interference does not prevent or seriously impair his enjoyment of the easement. Canyon View Irrigation Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

Separate Parcels.

It is not necessary that jury find value of each legal subdivision of tract sought to be condemned; if, however, there is more than one parcel of land, or several separate parcels of tracts, each separated from the other, then it is necessary for jury to determine value of each separate tract or parcel; but where tract is a single or consolidated tract, the value may be fixed as a single parcel or tract. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

This section does not require each lot in a platted subdivision to be appraised separately where all the lots being taken constitute a single quadrangular consolidated body of land under a single ownership. Caldwell v. Roark, 92 Idaho 99, 437 P.2d 615 (1968).

In proceedings by state to condemn real estate allegedly part of a larger tract owned by the city, jury award of severance damages for diminution of value of the remainder of real estate was warranted where jury could determine from evidence that property sought to be condemned constituted "only a part of a larger parcel" and severance damages could be assessed under this section. State ex rel. Symms v. Mountain Home, 94 Idaho 528, 493 P.2d 387 (1972).

Special Benefits.

This section forbids offsetting benefits to the remaining property against the fair market value of the property taken in arriving at just compensation. State ex rel. Symms v. Collier, 93 Idaho 19, 454 P.2d 56 (1969).

In determining just compensation in land condemnation proceedings under this section, benefits which may accrue to the remainder of the land not condemned may not be considered except as a set off against damages that have accrued to the remainder by reason of the severance from the

portion condemned. State ex rel. Symms v. Collier, 93 Idaho 19, 454 P.2d 56 (1969); Orofino v. Swayne, 95 Idaho 125, 504 P.2d 398 (1972).

Special Verdict.

In an eminent domain action, special verdict which conformed with this section but also contained a space for the jury to indicate its total award, which corresponded with the total of the compensation due for the property plus the damage caused by severance, was not erroneous. State ex rel. Moore v. Bastian, 98 Idaho 888, 575 P.2d 486 (1978).

Value.

"Value" is not what any one person would give for land for his own particular use, but what could probably be obtained for it if a sale were desirable and a purchaser sought, applying ordinary business methods to find him and to dispose of property. Weiser Valley Land & Water Co. v. Ryan, 190 F. 417 (9th Cir. 1911).

While evidence of value for specific purpose as an independent fact is inadmissible, a witness may, in arriving at an estimate of the value, take into consideration the most advantageous use to which land may be applied, including purpose for which it is sought. Weiser Valley Land & Water Co. v. Ryan, 190 F. 417 (9th Cir. 1911).

Market value of property is price it will bring when offered for sale by one who desires but is not obliged to sell, and the property is bought by one who is not obliged to purchase property. Idaho Farm Dev. Co. v. Brackett, 36 Idaho 748, 213 P. 696 (1923).

In eminent domain proceedings, the only issue for submission to a jury is the question of the value of the property sought to be taken or the amount of compensation for the taking. State ex rel. Flandro v. Seddon, 94 Idaho 940, 500 P.2d 841 (1972).

Cited Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909); Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910); Thomas v. Boise City, 25 Idaho 522, 138 P. 1110 (1914); State ex rel. Rich v. Idaho Power Co., 81 Idaho 487, 346 P.2d 596 (1959); Farris v. City of Twin Falls, 81 Idaho 583, 347 P.2d 996 (1959); Mabe v. State ex rel. Rich, 83 Idaho 222, 360 P.2d 799 (1961); Hadfield v. State ex rel. Burns, 86 Idaho 561, 388 P.2d 1018 (1964); Eagle Sewer Dist. v. Hormaechea, 109 Idaho 418, 707 P.2d

1057 (Ct. App. 1985); Union Pac. R.R. v. Idaho, 654 F. Supp. 1236 (D. Idaho 1987); Erickson v. Amoth, 112 Idaho 1122, 739 P.2d 421 (Ct. App. 1987).

RESEARCH REFERENCES

ALR. — Elements and measure of compensation in eminent domain proceeding for temporary taking of property. 49 A.L.R.6th 205.

Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

May Easement or Right of Way Be Appurtenant Where Servient Tenement Is Not Adjacent to Dominant. 15 A.L.R.7th 1.

§ 7-711A. Advice of rights form — Rights when condemning authority acquires property. — Whenever a state or local unit of government or a public utility is beginning negotiations to acquire a parcel of real property in fee simple, the condemning authority shall provide the owner of the property a form containing a summary of the rights of an owner of property to be acquired under this chapter. If the condemning authority does not supply the owner of the real property with this form, there will be a presumption that any sale or contract entered into between the condemning authority and the owner was not voluntary and the condemning authority may be held responsible for such relief, if any, as the court may determine to be appropriate considering all of the facts and circumstances. The form shall contain substantially the following:

(1) The (name of entity allowed to use eminent domain proceedings pursuant to chapter 7, title 7, Idaho Code) has the power under the constitution and the laws of the state of Idaho and the United States to take private property for public use. This power is generally referred to as the power of "eminent domain" or condemnation. The power can only be exercised when:

(a) The property is needed for a public use authorized by Idaho law;

(b) The taking of the property is necessary to such use;

(c) The taking must be located in the manner which will be most compatible with the greatest public good and the least private injury.

(2) The condemning authority must negotiate with the property owner in good faith to purchase the property sought to be taken and/or to settle with the owner for any other damages which might result to the remainder of the owner's property.

(3) The owner of private property to be acquired by the condemning authority is entitled to be paid for any diminution in the value of the owner's remaining property which is caused by the taking and the use of the property taken proposed by the condemning authority. This compensation, called "severance damages," is generally measured by comparing the value

of the property before the taking and the value of the property after the taking. Damages are assessed according to Idaho Code.

(4) The value of the property to be taken is to be determined based upon the highest and best use of the property.

(5) If the negotiations to purchase the property and settle damages are unsuccessful, the property owner is entitled to assessment of damages from a court, jury or referee as provided by Idaho law.

(6) The owner has the right to consult with an appraiser of the owner's choosing at any time during the acquisition process at the owner's cost and expense.

(7) The condemning authority shall deliver to the owner, upon request, a copy of all appraisal reports concerning the owner's property prepared by the condemning authority. Once a complaint for condemnation is filed, the Idaho rules of civil procedure control the disclosure of appraisals.

(8) The owner has the right to consult with an attorney at any time during the acquisition process. In cases in which the condemning authority condemns property and the owner is able to establish that just compensation exceeds the last amount timely offered by the condemning authority by ten percent (10%) or more, the condemning authority may be required to pay the owner's reasonable costs and attorney's fees. The court will make the determination whether costs and fees will be awarded.

(9) The form contemplated by this section shall be deemed delivered by United States certified mail, postage prepaid, addressed to the person or persons shown in the official records of the county assessor as the owner of the property or if hand delivered to such person who acknowledges receipt of the form in writing on the form. A second copy will be attached to the appraisal at the time it is delivered to the owner.

(10) If a condemning authority desires to acquire property pursuant to this chapter, the condemning authority or any of its agents or employees shall not give the owner any timing deadline as to when the owner must respond to the initial offer which is less than thirty (30) days. A violation of the provisions of this subsection shall render any action pursuant to this chapter null and void.

(11) Nothing in this section changes the assessment of damages set forth in section 7-711, Idaho Code.

History.

I.C., § 7-711A, as added by 2000, ch. 354, § 1, p. 1188; am. 2014, ch. 268, § 1, p. 671.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 268, inserted "or if hand delivered to such person who acknowledges receipt of the form in writing on the form" at the end of the first subsection (9).

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 7-712. Damages — Date of accrual. — For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value, at that date, shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as provided in the last section. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages. The compensation and damages awarded shall draw lawful interest from the date of the summons.

History.

C.C.P. 1881, § 862; R.S., R.C., & C.L., § 5221; C.S., § 7415; I.C.A., § 13-712; am. 1957, ch. 127, § 1, p. 215.

CASE NOTES

Contractual agreements for interest.

Date for valuation.

Double recovery.

Improvements.

Interest.

Inverse condemnation.

Measure of damages.

Payment in money.

Subsequent damages.

Contractual Agreements for Interest.

Where plaintiff entered into a contractual agreement providing, inter alia, for plaintiff to pay defendants 6% interest per annum from April 1, 1967, the date of plaintiff's taking possession of property, on amount of award above a deposit paid into court by plaintiff, it was correct for court to enter

judgment comprised of the fair market value of the property less the deposit, interest thereon from April 1, 1967, until date of judgment, and costs, plus an allowance of interest of 6% per annum on the total judgment, including interest and costs, from its entry until paid; although a different result might have been reached as to interest had it been due as a result of this section, rather than the agreement, as affected by § 28-22-104 and former § 28-22-105. State ex rel. Symms v. Collier, 93 Idaho 19, 454 P.2d 56 (1969).

Date for Valuation.

In eminent domain proceeding wherein court and parties used date of possession by plaintiff instead of the date of summons as the valuation date, without objection at the trial or thereafter, ruling on this point was not necessary on appeal; and if there was error it was not reversible error, since there was less than three months difference between the two dates. State ex rel. Symms v. Collier, 93 Idaho 19, 454 P.2d 56 (1969).

The value of property taken in an eminent domain proceeding and the damage caused by the severance to any remaining property is computed from the date of issuance of the summons and not from the date the property is actually taken. State ex rel. Moore v. Bastian, 97 Idaho 444, 546 P.2d 399 (1976).

In eminent domain action, if error occurred in the admission of evidence regarding capitalization of annual rentals accruing after the time of the taking, it was cured by instructions explicitly directing the jury to determine value as of the date of the taking. State ex rel. Moore v. Bastian, 98 Idaho 888, 575 P.2d 486 (1978).

Double Recovery.

Where respondent had recovered a judgment liquidating his flood damage (as yet not segregated from his crop damages) and the district by eminent domain had taken the premises in a condition undamaged or without deduction or depreciation due to the flooding, the payment of both judgments in toto would afford him double recovery. Zollinger v. Big Lost River Irrigation Dist., 83 Idaho 411, 364 P.2d 176 (1961).

Improvements.

Improvements appertaining to the land sought to be condemned are assessed as a part of the realty, and the finding of the value of realty includes improvements. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

Prospect hole on placer claim is not an improvement in the sense in which the word is used in this section. Tyson Creek R.R. v. Empire Mill Co., 31 Idaho 580, 174 P. 1004 (1918).

Interest.

Interest may be allowed from date of summons to date of judgment although defendant continued to receive rents and profits, since plaintiff could have obtained possession in shorter time. Brown v. United States, 263 U.S. 78, 44 S. Ct. 92, 68 L. Ed. 171 (1923).

Under this section, owner is entitled to interest on damages awarded for land taken from the date of summons. Weiser Valley Land & Water Co. v. Ryan, 190 F. 417 (9th Cir. 1911).

The condemnee should be allowed interest upon the compensation and damages awarded from the time the condemnor either takes possession, or becomes entitled to possession, of the property. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

Where the order for possession in a condemnation proceeding was filed March 29, 1955 interest would be allowed at the legal rate from such date rather than from the date of May 15, 1951, which was the date of the institution of proceedings, plaintiff being unable to take possession of the property until such first mentioned date in 1955 due to litigation on part of the owners but interest would only be recoverable from the time that the order for possession was filed. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

Under the eminent domain statutes, it is clear that a defendant is entitled to interest running from the date of the summons. Eagle Sewer Dist. v. Hormaechea, 109 Idaho 418, 707 P.2d 1057 (Ct. App. 1985); City of McCall v. Seubert, 142 Idaho 580, 130 P.3d 1118 (2006).

Inverse Condemnation.

Since this section chronologically limits the right to compensation from the date of the summons in an eminent domain proceeding, this section cannot be construed to govern the right to compensation in an inverse condemnation action, which is an action predicated on the proposition that a taking occurred without such formal proceedings. City of Lewiston v. Lindsey, 123 Idaho 841, 853 P.2d 596 (Ct. App. 1993).

Measure of Damages.

Value of land at time it is taken, and not its value at time of trial, is the measure of damages, and it is error to admit evidence as to its value at latter date. Spokane & Palouse Ry. v. Lieuallen, 3 Idaho 381, 29 P. 854 (1892).

If the damages are paid to the landowner, the fact that the plaintiff in condemnation may subsequently commit waste or damage on the lands so condemned, and may not prosecute the proceeding to final judgment, can in no way prejudice the landowner whose damages are assessed as of a previous date. Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909).

A corporation having the power of eminent domain has no right to enter upon and take possession of the premises sought to be condemned until it either pays to the owner of the property the amount assessed and found as damages by commissioners duly appointed or, in case the owner refuses to accept the award, has paid the same to the clerk of the court to abide the result of the action. Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910).

For instruction as to measure of damages in condemnation proceeding, see Portneuf-Marsh Valley Irrigating Co. v. Portneuf Irrigating Co., 19 Idaho 483, 114 P. 19 (1911).

Evidence of discovery of mineral deposits upon lands sought to be condemned for railroad right of way, after issuance of summons, is admissible for purpose of enabling jury to determine whether market value of the land was affected thereby at time of issuance of summons; in such cases it is not permissible to draw distinction between actual value and market value. Tyson Creek R.R. v. Empire Mill Co., 31 Idaho 580, 174 P. 1004 (1918).

Ordinarily in determining market value of property to be taken, court would come as nearly as practicable to actual value thereof, and supreme

court has adopted market value as measure of compensation. Oregon-Washington R.R. & Nav. Co. v. Campbell, 34 Idaho 601, 202 P. 1065 (1921).

Under this section requiring determination of damages for the area taken in the eminent domain proceeding as of June 27, 1958, deduction for existing flood damage for which recovery was sought in this action would have to be made in determining the valuation of the premises sought to be taken. Zollinger v. Big Lost River Irrigation Dist., 83 Idaho 411, 364 P.2d 176 (1961).

Where the state restricted access to plaintiff's business property from the adjacent highway by the erection of curbs in front of their property along the highway without instituting condemnation proceedings and causing summons to be issued, damages will be assessed as of the time of the constructive taking and where plaintiffs were not advised at said time that such taking was for five years only after which full access to the property would be restored, the temporary character of such taking cannot be considered in assessing damages. Lobdell v. State ex rel. Bd. of Hwy. Dirs., 89 Idaho 559, 407 P.2d 135 (1965).

Where a group of contiguous lots in a platted subdivision is taken as a unit, the jury is required to fix the value of the entire parcel as a unit as of the time the summons is issued and not by aggregating the individual sales values which separate lots may bring when sold to individual prospective homebuilders over a period of time in the future. Caldwell v. Roark, 92 Idaho 99, 437 P.2d 615 (1968).

Payment in Money.

The state in a condemnation proceeding for taking of land of manufacturing concern used as storage by the defendant was not entitled to contend that there was available to the defendant for storage other state owned land, since the defendant was entitled to cash for the damage sustained by it and was not required to take other land in exchange. State ex rel. Rich v. Dunclick, Inc., 77 Idaho 45, 286 P.2d 1112 (1955).

The defendant in a condemnation suit is entitled to be paid in money for the value of the land taken and for the damage to the land not taken because

of the severance. State ex rel. Rich v. Dunclick, Inc., 77 Idaho 45, 286 P.2d 1112 (1955).

Subsequent Damages.

If damages sustained are fixed as of the date of issuance of summons and landowner receives that compensation, it can make no difference to him how much damage or waste may thereafter be committed upon the property. Portneuf Irrigation Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909).

Damages not reasonably anticipatory at date of summons are properly excluded. Oregon-Washington R. & Nav. Co. v. Campbell, 34 Idaho 601, 202 P. 1065 (1921).

Cited Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916); Eagle Sewer Dist. v. Hormaechea, 109 Idaho 418, 707 P.2d 1057 (Ct. App. 1985).

§ 7-713. Curing defective title. — If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same as in this chapter prescribed.

History.

C.C.P. 1881, § 863; R.S., R.C., & C.L., § 5222; C.S., § 7416; I.C.A., § 13-713.

§ 7-714. Payment of damages. — The plaintiff must, within thirty (30) days after final judgment, pay the sum of money assessed, but may, at the time of or before payment, elect to build the fences and cattle guards, and, if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within eight (8) months from the time the railroad is built on the land taken, and, if such bond is given, need not pay the cost of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

History.

C.C.P. 1881, § 864; R.S., R.C., & C.L., § 5223; C.S., § 7417; I.C.A., § 13-714.

STATUTORY NOTES

Cross References.

Fences and cattle guards, cost of construction assessed as damages, § 7-711.

CASE NOTES

Judgments in Condemnation Proceedings.

In eminent domain proceedings, court enters two judgments; one in favor of defendant for damages assessed under § 7-711, the other in favor of plaintiff for condemnation of property after the first judgment is paid, as provided in § 7-716. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

Cited Weiser Valley Land & Water Co. v. Ryan, 190 F. 417 (9th Cir. 1911); Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909); Chicago, M. & St. P. Ry. v. Trueman, 18 Idaho 687, 112 P. 210 (1910); Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916).

§ 7-715. Payment of damages — Failure to make payment. — Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

History.

C.C.P. 1881, § 865; R.S., R.C., & C.L., § 5224; C.S., § 7418; I.C.A., § 13-715.

STATUTORY NOTES

Cross References.

Execution in civil actions, § 11-101 et seq.

CASE NOTES

Constitutionality.

Payment of judgment.

Personal judgment.

Constitutionality.

The fact that the statute grants to a defendant in condemnation proceedings the right to a trial subsequent to the assessment made by the commissioners, and also the right of appeal, does not render the provision of the statute, authorizing the appointment of the commissioners and assessment of damages and the taking of possession after payment of the amount so assessed, obnoxious to the constitution. Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909).

Payment of Judgment.

Pursuant to § 7-714, the plaintiff is required to pay the final judgment entered for damages assessed under § 7-711 within 30 days after judgment is entered. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

Personal Judgment.

Under this section a personal judgment may be properly rendered against plaintiff for the damages ascertained. Weiser Valley Land & Water Co. v. Ryan, 190 F. 417 (9th Cir. 1911).

Cited Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916).

§ 7-716. Final order of condemnation. — When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two (2) sections, the court must make final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

History.

C.C.P. 1881, § 866; R.S., R.C., & C.L., § 5225; C.S., § 7419; I.C.A., § 13-716.

CASE NOTES

Costs.

Judgments in condemnation proceedings.

When title passes.

Costs.

Costs should be awarded to landowners against the state regardless of who are the successful parties. State ex rel. McKelvey v. Styner, 57 Idaho 144, 63 P.2d 152 (1936).

Judgments in Condemnation Proceedings.

It is improper to render judgment of condemnation until award of compensation has been paid. Weiser Valley Land & Water Co. v. Ryan, 190 F. 425 (9th Cir. 1911).

Plaintiff is not left to his own discretion as to whether or not he will pay judgment, and leave defendant's property charged with a liability to be taken at the will or convenience of plaintiff. To guard against such possible condition, the legislature provided for a personal judgment and for means by which the same could be enforced. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

Under provisions of this section and §§ 7-714, 7-715 there are two judgments to be entered by trial court; first, in favor of defendant for damages as assessed under provisions of § 7-711, and second, in favor of plaintiff for condemnation, describing property and purpose of condemnation, entered after payment of the first judgment, as prescribed under this section. Big Lost River Irrigation Co. v. Davidson, 21 Idaho 160, 121 P. 88 (1912).

When Title Passes.

No title can pass to condemnor until after payment of the value of the property has been made. Ryan v. Weiser Valley Land & Water Co., 20 Idaho 288, 118 P. 769 (1911).

Cited Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909); Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680 (1916).

§ 7-717. Possession by plaintiff — Payment of damages — Appointment of commissioners. — At any time after trial and judgment entered, or pending an appeal from the judgment to the Supreme Court, whenever the plaintiffs shall have paid into the court for the defendant the full amount of the judgment, and such further sum as shall be required by the court as a fund to pay any further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant, if for any cause the property shall not be finally taken for public use, the district court in which the proceeding was tried may, upon notice of not less than ten (10) days, authorize the plaintiff, if already in possession, to continue therein, and if not, to take possession of and use the property during the conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof.

The defendant who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter, upon obtaining an order therefor from the court. It shall be the duty of the court, or the judge thereof, upon application being made by such defendant, to order and direct that the money so paid into court for him, be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to [be] an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. The court may order the money to be deposited in the county treasury, and in such case it shall be the duty of the treasurer to receive all such moneys, duly receipt for, and safely keep the same, and to pay out such moneys in such manner, and at such times, as the court or judge thereof may direct, and for such duty he shall be liable to the plaintiff upon his official bond; provided further, that at any time after the commencement of proceedings in the district court, as provided for in this chapter, to condemn property, and upon ten (10) days' notice to the adverse party, the district court or the judge thereof may appoint three (3) disinterested persons, who shall be residents of the county in which the land is situated, as commissioners to

assess and determine the damages that the defendant will sustain by reason of the condemnation and appropriation of the property described in the complaint, and the said commissioners shall, before entering upon the discharge of their duties, take and subscribe an oath to faithfully and impartially discharge their duties as such commissioners. Such commissioners shall, within five (5) days of their appointment, give notice in writing of the time and place where they will meet for the purpose aforesaid, which time shall not be less than five (5) days nor more than ten (10) days from the date of giving said notice, and which place shall be within five (5) miles of the premises aforesaid, unless another time or place is agreed upon by the commissioners and the parties. At the time and place mentioned in such notice they may administer oaths to witnesses, and hear the evidence offered by the parties, and, after viewing the premises, shall report in writing their proceedings and the damages which they find the defendant will sustain by reason of the condemnation and appropriation of said property, which report shall be signed by said commissioners, or a majority thereof, and be filed in the office of the clerk of the district court in which such action shall be pending within ten days of the date of the conclusion of the commissioners' proceedings unless additional time therefor is granted by the court or judge thereof; and at any time after payment to the defendant of the amount so assessed and found by said commissioners as damages, or in case the defendant shall refuse to receive the same, then at any time after such amount shall be deposited with the clerk of the said court to abide the result of said action, the plaintiff may enter upon, and take possession of and use, the property mentioned in the complaint and do such work thereon as may be required for the easement or title sought according to its nature, until the final conclusion of the litigation concerning the same: provided further, that at the time of making such payment to the defendant of the amount so assessed and found by said commissioners as damages, or in case the defendant shall refuse to receive the same, then at any time after such amount shall be deposited with the clerk of the said court to abide the result of said action, the plaintiff may elect to build the fences, cattle guards and other structures by said commissioners found to be necessary, and may execute to the defendant a bond as provided in Section 7-714[, Idaho Code].

History.

C.C.P. 1881, § 867; R.S., § 5226; am. 1888-1889, p. 12; reen. R.C. & C.L., § 5226; C.S., § 7420; I.C.A., § 13-717; am. 1951, ch. 110, § 1, p. 256.

STATUTORY NOTES

Cross References.

Election to build fences and cattle guards, bond, § 7-714.

Notice by mail, § 60-109A.

Compiler's Notes.

The bracketed word "be" in the third sentence of the second paragraph was inserted by the compiler.

The bracketed insertion at the end of the second paragraph was added by the compiler to conform to the statutory citation style.

A 1953 amendment (S.L. 1953, ch. 252) did not provide due process of law, as required by Idaho Const., Art. I, § 13, for the determination of just compensation for the taking of land sought to be condemned to be paid to the landowner, or deposited in court for his use and benefit if he refused to accept same, prior to the appropriation and taking possession of such land and thereby offended the provision of Idaho Const., Art. I, § 14, requiring that just compensation must be paid prior to the taking. In *Yellowstone Pipe Line Co. v. Drummond*, 77 Idaho 36, 287 P.2d 288 (1955), such amendment was found to be unconstitutional and void.

CASE NOTES

Appeals.

Constitutionality.

Improvements prior to taking.

Injunction.

Interest allowed upon order for possession.

Judgment.

Jurisdiction.

Possession upon deposit in court.

Right to jury.

Service of notice.

Stay of proceedings.

Taking possession.

Appeals.

Appellate court denied condemnee's motion to dismiss the state's appeal because the appeal was not moot even though the state tendered a check to the condemnee in satisfaction of the judgment before filing its appeal. If the appellate court determined that the jury rendered a verdict in excess of just compensation and ordered the condemnee to refund to the state funds in excess of that amount, the appeal would not be moot because the judicial determination would have a practical effect on the outcome, in that the state would recover some of its money. State Ex Rel. Winder v. Canyon Vista Family Ltd. P'ship, 148 Idaho 718, 228 P.3d 985 (2010).

Constitutionality.

This section is not in violation of either Idaho Const., Art. I, § 14, or Idaho Const., Art. I, § 7. Under the constitution, private property cannot be taken for a public use without payment of a just compensation therefor in advance of the taking, but tender of the amount assessed, in manner prescribed by law, or, in case of his refusal to accept same, a payment thereof into court to await determination of the action is a sufficient compliance with the constitutional requirement as to payment to authorize court in letting a party into possession of property that he seeks to condemn. Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909). See also Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

Plaintiff, who took immediate possession of right of way condemned for pipe line under provisions of 1953 amendment of this section, which the supreme court held unconstitutional was entitled to continue in possession until final outcome of litigation under terms of order which placed it in possession, providing the plaintiff prosecuted proceedings to final judgment

and paid the determined value and damages sustained by defendant in the taking, otherwise the cash deposited under the order would be liable for reasonable rental value and damages sustained by the occupation. Yellowstone Pipe Line Co. v. Drummond, 77 Idaho 36, 287 P.2d 288 (1955).

Service of notice for immediate possession of land sought to be condemned under the provisions of Session Laws 1953, ch. 252 amending this section, is defective in that it does not provide for action by the clerk to notify defendants or to send copies of moving papers to non-resident defendants, and does not provide for either actual service or constructive service of notice of motion; hence, the service does not conform to due process of law. Yellowstone Pipe Line Co. v. Drummond, 77 Idaho 36, 287 P.2d 288 (1955).

Session Laws 1953, ch. 252, amending this section by providing that the plaintiff in an eminent domain proceeding may file an affidavit appraising the damages and that the court upon the filing of such affidavit may enter an order that, upon payment of double such amount, the plaintiff may take immediate possession is unconstitutional, since it does not provide for an impartial tribunal to fix the damages and violates requirement that compensation must be paid before the taking. Yellowstone Pipe Line Co. v. Drummond, 77 Idaho 36, 287 P.2d 288 (1955).

Improvements Prior to Taking.

Where a corporation invested with the power of eminent domain enters upon land without the consent of the owner, express or implied, and places improvements thereon, and subsequently institutes proceedings to condemn the same land, the common-law rule that a structure erected by a tort-feasor becomes a part of the land does not apply and the owner is not entitled to the value of the improvements thus wrongfully erected. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Injunction.

Condemnor, proceeding under this statute, may be enjoined from possession upon refusal to pay award (*Weiser Valley Land & Water Co. v. Ryan*, 190 F. 425, 9th Cir. 1911) and in other cases where ends of justice

require it. Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 236, 158 P. 792, subsequent appeal, 29 Idaho 421, 160 P. 265 (1916), appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 1372 (1917). See also Ryan v. Weiser Valley Land & Water Co., 20 Idaho 288, 118 P. 769 (1911).

Interest Allowed Upon Order for Possession.

The condemnee should be allowed interest upon the compensation and damages awarded from the time the condemnor either takes possession, or becomes entitled to possession, of the property. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

Where the order for possession in a condemnation proceeding was filed March 29, 1955, interest would be allowed at the legal rate from such date rather than from the date of May 15, 1951, which was the date of the institution of proceedings, plaintiff being unable to take possession of the property until such first mentioned date in 1955 due to litigation on part of the owners but interest would only be recoverable from the time that the order for possession was filed. Independent Sch. Dist. v. C.B. Lauch Constr. Co., 78 Idaho 485, 305 P.2d 1077 (1957).

Judgment.

Upon award of commissioners in condemnation proceedings, if amount awarded is paid by plaintiff and accepted by defendant, a decree confirming such action of the parties will be in substance a decree by consent or confession and will come as fully within purview of the statute as if the case had gone to trial before a jury and judgment and decree had been entered on the verdict. Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910).

Jurisdiction.

Under statute granting power of eminent domain, district court, or judge thereof, has jurisdiction to determine right or necessity for exercise of that right; it may pass on the competency of testimony offered and order appointment of commissioners; and its action may be reviewed on an appeal, but cannot be reviewed on certiorari. Coeur d'Alene Mining Co. v. Woods, 15 Idaho 26, 96 P. 210 (1908).

Use, necessity, and all the requirements of § 7-704 should be tried and found by court before commissioners are appointed. Portneuf Irrigating Co.

v. Budge, 16 Idaho 116, 100 P. 1046 (1909); Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910).

This section confers all the jurisdiction necessary to a hearing and assessment of damages; and the means necessary to carry the proceedings into effect are given by § 1-1622. Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910).

Possession Upon Deposit in Court.

If the condemnor offers to pay the amount found due by the commissioners and in case of defendant's refusal to receive the same, deposits the money with the clerk of the district court to abide the result of the action, the plaintiff may, by decree of the court then enter upon and take possession of and use, property mentioned in the complaint. Pacific N.W. Pipeline Corp. v. Waller, 80 Idaho 105, 326 P.2d 388 (1958).

Right to Jury.

Right of trial by jury in proceedings for condemnation of property to public use does not exist as a constitutional right unless the constitution itself contains a specific grant and guaranty of such right. Portneuf Irrigating Co. v. Budge, 16 Idaho 116, 100 P. 1046 (1909).

Primarily right of trial by jury is accorded equally to both parties to action; as a substitute therefor there is accorded to plaintiff the right of having commissioners appointed to assess the damages that will be sustained by defendant, and if plaintiff pays such award and defendant accepts same, right of trial by jury is ended; if, on the other hand, plaintiff pays the award and defendant refuses to accept it, plaintiff may no longer demand a jury, but defendant may still demand a jury to assess the damages that he will sustain. Pyle v. Woods, 18 Idaho 674, 111 P. 746 (1910).

When the condemnor refuses to abide by the finding of the commissioners, he does not secure possession of the land before the damages have been ultimately determined and he is entitled to have his remedy prosecuted in a district court proceeding before a jury as in a civil action. Pacific N.W. Pipeline Corp. v. Waller, 80 Idaho 105, 326 P.2d 388 (1958).

After the commissioners have made an award, either party may refuse to be bound thereby, and the remedy of a jury trial is common to both parties.

Pacific N.W. Pipeline Corp. v. Waller, 80 Idaho 105, 326 P.2d 388 (1958).

Service of Notice.

Service on March 31 for hearing April 10 was sufficient. Empire Mill Co. v. District Court, 27 Idaho 383, 149 P. 499, writ denied, 27 Idaho 400, 149 P. 505 (1915).

Stay of Proceedings.

Appeal may be taken from a final judgment in eminent domain proceeding, and such appeal does not stay rights of either party to proceed in district court or upon appeal as provided by law. McLean v. District Court, 24 Idaho 441, 134 P. 536 (1913). See also Thomas v. Boise City, 25 Idaho 522, 138 P. 1110 (1914).

Proceedings in condemnation proceedings may be stayed pending appeal from condemnation order upon appellant filing bond to indemnify for delay. Grangeville Hwy. Dist. v. Ailshie, 48 Idaho 592, 285 P. 481 (1929).

Taking Possession.

In an ordinary condemnation action, the condemnor is not entitled to possession of the premises until such time as a deposit in the amount fixed by appointed commissioners has been paid into court. Lobdell v. State ex rel. Bd. of Hwy. Dirs., 89 Idaho 559, 407 P.2d 135 (1965).

Cited Brown v. United States, 263 U.S. 78, 44 S. Ct. 92, 68 L. Ed. 171 (1923); Blackwell Lumber Co. v. Empire Mill Co., 29 Idaho 236, 158 P. 792 (1916); Bel v. Benewah County, 60 Idaho 791, 97 P.2d 397 (1939); Eagle Sewer Dist. v. Hormaechea, 109 Idaho 418, 707 P.2d 1057 (Ct. App. 1985).

§ 7-718. Costs. — Costs may be allowed or not, and, if allowed, may be apportioned between the parties on the same or adverse sides in the discretion of the court.

History.

C.C.P. 1881, § 868; R.S., R.C., & C.L., § 5227; C.S., § 7421; I.C.A., § 13-718.

CASE NOTES

Application of section.

Attorney's fees.

Application of Section.

It would clearly be an abuse of discretion of trial court, under this statute, to refuse to allow defendant costs where plaintiff had procured appointment of commissioners and had a hearing, entailed all the costs incident to production of witnesses and attendance on the meeting of the commissioners, and then dismissed the action. Chicago, M. & St. P. Ry. v. Trueman, 18 Idaho 687, 112 P. 210 (1910).

In suit in condemnation, under the constitution and statutes of this state, costs of the proceeding and cost of appeal should be taxed against condemnor where the appeal has been prosecuted by party seeking condemnation. Rawson-Works Lumber Co. v. Richardson, 26 Idaho 37, 141 P. 74 (1914).

Costs are not allowed to successful defendants in proceeding instituted by government. United States v. Wade, 40 F.2d 745 (D. Idaho 1926).

Notwithstanding this section, the condemnor must pay just compensation for the property taken and all costs. Bassett v. Swenson, 51 Idaho 256, 5 P.2d 722 (1931).

Attorney's Fees.

An award of reasonable attorneys' fees to the condemnee in an eminent domain proceeding is a matter for the trial court's guided discretion and, as

in other areas of the law, such award will be overturned only upon a showing of abuse; the condemnee's costs may be awarded under Idaho R. Civ. P. 54(d)(1)(C) or 54(d)(1)(D). Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

Attorneys' fees and costs are allowable, in eminent domain proceedings, under Idaho R. Civ. P. 54(d)(1); however, such fees and costs are not mandatory as within the definition of just compensation. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

Attorneys' fees and other expenses are not recoverable in a condemnation proceeding, except as authorized by statute. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

In determining award of attorneys' fees to a condemnee, the court should consider the following factors: whether the condemnor reasonably made a timely offer of settlement of at least 90 percent of the ultimate jury verdict and whether such offer was made within a reasonable period after the institution of the action; any controverting of the public use and necessity allegations; the outcome of any hearing thereon and any modification in the plans or design of the condemnor's project resulting from the condemnee's challenge; and whether the condemnee voluntarily granted possession of the property pending resolution of the just compensation issue. As to the amount of attorneys' fees awardable, the criteria outlined in Idaho R. Civ. P. 54(e)(3) are appropriate in condemnation, as in all other civil cases; however, the court should not automatically adopt any contingent fee or contractual arrangement, but rather the fee awarded may be more or less than that provided in the lawyer-client contract. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

Landowners could not recover attorney fees incurred in defending a condemnation claim, because this section provides for the awarding of court

costs, not attorney fees. Telford Lands LLC v. Cain, 154 Idaho 981, 303 P.3d 1237 (2013).

§ 7-719. Rules of practice and appeals. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 869; R.S., R.C., & C.L., § 5228; C.S., § 7422; I.C.A., § 13-719, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho App. R. 2.

§ 7-720. Application to municipalities. — Nothing in this code must be construed to abrogate or repeal any statute provided for the taking of property in any municipality for street purposes. Any municipality at its option may exercise the right of eminent domain under the provisions of this chapter for any of the uses and purposes mentioned in section 7-701, Idaho Code.

History.

C.C.P. 1881, § 870; R.S. & R.C., § 5229; am. 1913, ch. 108, § 1, p. 429; compiled and reen. C.L., § 5229; C.S., § 7423; I.C.A., § 13-720; am. 2009, ch. 11, § 2, p. 14.

STATUTORY NOTES

Cross References.

Creation and vacation of city streets; eminent domain, § 50-311.

Amendments.

The 2009 amendment, by ch. 11, deleted "sections 50-1124 and 50-1125, in like manner and to the same extent as for any of the purposes mentioned in" preceding "section 7-701."

Compiler's Notes.

The reference to "this code" in the first sentence is to the Code of Civil Procedure, a division of the Idaho Code, consisting of Titles 1 through 13.

The practice part of the Code is now contained in the Idaho Rules of Civil Procedure.

CASE NOTES

Extraterritorial Powers.

City lacked extraterritorial eminent domain power to condemn easements located outside of its boundaries for the purpose of constructing electric transmission lines, because there was no express grant of extraterritorial

eminent domain power in § 7-701(11) or this section, indicating that the Idaho legislature did not grant, or intend to grant, such power in the general eminent domain statutes. Alliance v. City of Idaho Falls, 742 F.3d 1100 (9th Cir. 2013).

Cited Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925); Boise City v. Baxter, 41 Idaho 368, 238 P. 1029 (1925).

Idaho Code § 7-721

§ 7-721. Possession by plaintiff pending trial. — In any proceeding under the provisions of this chapter for the acquisition of real property, the plaintiff may take possession of and use such property at any time after just compensation has been judicially determined and payment thereof made into court. Judicial determination shall be satisfied by the following requirements:

(1) At any time after an action for condemnation has been commenced under the provisions of this chapter and after the defendant has made an appearance, the plaintiff may file a motion asking that said plaintiff be placed in lawful possession of and have the use of said property and the court shall fix a date, not less than ten (10) or more than twenty (20) days after the filing of such motion, for the hearing thereon and shall require due notice to be given to each party to the proceedings whose interest would be affected by the requested taking. Notice herein shall be given as provided in rule 5(a) or 5(b), as the case may be, of the Idaho rules of civil procedure.

If the defendant has not appeared, but is not in default, plaintiff may proceed as herein provided twenty (20) days after the action shall have been commenced by serving the motion and notice of the hearing in the same manner as required for service of summons.

(2) At the hearing the court shall first determine whether or not plaintiff (a) has the right of eminent domain, (b) whether or not the use to which the property is to be applied is a use authorized by law, (c) whether or not the taking is necessary to such use, and (d) whether or not plaintiff has sought, in good faith, to purchase the lands sought to be taken and the court shall enter an order thereon which shall be a final order as to these issues and an appeal may be taken therefrom; provided, however, no appeal therefrom shall stay further proceedings.

(3) If the matters in the preceding subsection are determined in favor of the plaintiff the court shall hear the issues raised by the plaintiff's motion for taking and shall receive such evidence as it may consider necessary and proper for a finding of just compensation, but the court may limit the number of witnesses presented by any party to the action, and, in its discretion, may appoint a disinterested appraiser as an agent of the court to

evaluate the property to which the motion relates and to report his conclusions to the court within ten (10) days from the date of his appointment; and the court shall fix his fee which shall be paid by the plaintiff. The court shall within five (5) days after the hearing, or if it shall appoint an appraiser, within five (5) days after receiving his report, make an order of determination of just compensation.

(4) Neither the order of the court determining just compensation, nor the amount of the deposit, nor the report of the appraiser appointed by the court shall be admissible in evidence in further proceedings under this section.

(5) After the court has entered its order of determination of the amount of just compensation, the plaintiff may deposit such amount with the court and the court shall thereupon enter an order fixing a date from which the plaintiff shall be entitled to take possession of and use the property. After such deposit and order have been made the cause shall proceed to trial in the regular manner.

(6) Any party defendant may file with the court an application to withdraw his share of the amount deposited by the plaintiff. Such application may be filed at any time after the court has entered its order placing plaintiff in possession and use of the property. If there be only one (1) defendant in the action, the court shall authorize the requested withdrawal of funds, but if there shall be more than one (1) defendant the court shall fix a date for hearing on the application to withdraw funds and shall require notice to be given to each party whose interest would be affected by such withdrawal. After hearing the court shall determine the share of the funds deposited to which the defendants or any of them are lawfully entitled and shall authorize the withdrawal requested or such part thereof as shall be proper.

(7) If more than eighty percent (80%) of the amount deposited is withdrawn, the defendant or defendants making the withdrawal shall be required to make a written undertaking, executed by two (2) or more sufficient sureties, approved by the court, to the effect that they are bound to the plaintiff for the payment to it of such sum by which the amount withdrawn shall exceed the amount of the award finally determined upon trial of the cause.

(8) Upon trial of the cause the court shall enter judgment against the plaintiff for the amount of the award, and the plaintiff shall pay to the defendant or defendants the amount, if any, by which such judgment exceeds the amount previously deposited; provided that if the award and judgment shall be less than the amount withdrawn under subsection (6) of this section, the defendant or defendants shall refund the difference to the clerk of the court and if such refund is not made within thirty (30) days the court shall enter judgment in favor of the plaintiff and against such defendant or defendants for the amount of the difference.

(9) After plaintiff has deposited with the court the amount determined by the court to be just compensation, no interest shall accrue on the amount so deposited.

History.

I.C., § 7-721, as added by 1969, ch. 234, § 1, p. 745; am. 1972, ch. 119, § 1, p. 236; am. 1975, ch. 141, § 1, p. 321; am. 2006, ch. 451, § 1, p. 1341.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 451, in the introductory paragraph, substituted "for the acquisition of real property" for "whereby the state of Idaho, or any board, agency or political subdivision thereof, or municipality therein, is seeking to acquire real property necessary for the construction, maintenance, alteration, and repair of freeways, expressways, highways, roads, streets, airports, and any necessary structures or appurtenances needed in connection therewith, or the construction and extension of culinary water systems, sewers and sewerage systems, including sewerage treatment facilities" and made stylistic changes.

Effective Dates.

Section 2 of S.L. 1975, ch. 141 declared an emergency. March 26, 1975.

Section 2 of S.L. 2006, ch. 451 declared an emergency. Approved April 14, 2006.

CASE NOTES

Authorized use.

Valuation in condemnation proceedings.

Authorized Use.

Where a water and sewer district sought to obtain temporary construction easements and permanent sewer easements across property owners' land for the purpose of constructing a sewerage facility to transport sewage to a treatment plant, the district's purpose was a public use within the meaning of Idaho Const., Art. I, § 14, and was, therefore, an authorized use as contemplated by subdivision (2)(b) of this section for purposes of determining the sewer district's entitlement to possession of the property pending trial. Payette Lakes Water & Sewer Dist. v. Hays, 103 Idaho 717, 653 P.2d 438 (1982).

Valuation in condemnation proceedings.

The Idaho transportation board negotiated in good faith for property condemned to facilitate the widening of a highway and the creation of an interchange. The valuation by the board was fair and did not have to take into account a possible increase in value due to a proposed extension of an unrelated road. Neither the order of condemnation nor the complaint proposed condemnation of any portion of the property at issue for the purpose of the extension. State DOT v. HJ Grathol, 153 Idaho 87, 278 P.3d 957 (2012).

Cited State ex rel. Moore v. Bastian, 97 Idaho 444, 546 P.2d 399 (1976); Eagle Sewer Dist. v. Hormaechea, 109 Idaho 418, 707 P.2d 1057 (Ct. App. 1985).

Idaho Code Ch. 8

Chapter 8
CHANGE OF NAMES

Sec.

7-801. Jurisdiction in district court.

7-802. Petition for change.

7-803. Publication of petition and notice.

7-804. Hearing and order.

7-805. Restrictions on name changes for convicted sexual offenders — Notification of name changes of convicted sexual offenders.

§ 7-801. Jurisdiction in district court. — Application for change of names must be heard and determined by the district courts.

History.

C.C.P. 1881, § 871; R.S., R.C., & C.L., § 5245; C.S., § 7424; I.C.A., § 13-801.

STATUTORY NOTES

Cross References.

Costs, Idaho Civil Procedure Rules 54(d)(1) through 54(d)(7).

Statute of limitations applicable to special proceedings of a civil nature, § 5-240.

RESEARCH REFERENCES

Am. Jur. 2d. — 57 Am. Jur. 2d, Name, §§ 16 — 58.

C.J.S. — 65 C.J.S., Names, §§ 21 — 28.

ALR. — Right of married woman to use maiden surname. 67 A.L.R.3d 1266.

Commercial enterprise: change in name, location, composition, or structure of obligor commercial enterprise subsequent to execution of guarantee or surety agreement as affecting liability of guarantor or surety to the obligee. 69 A.L.R.3d 567.

Circumstances justifying grant or denial of petition to change adult's name. 79 A.L.R.3d 562.

§ 7-802. Petition for change. — (1) All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person, if the person is an adult or an emancipated minor; and if such person is under the age of eighteen (18) years and is not an emancipated minor, by one (1) of the parents or by a guardian. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and reason for such change of name.

(2) If the person whose name is proposed to be changed is under eighteen (18) years of age and is not an emancipated minor, the petition must also include the following: (a) If the petition is signed by only one (1) parent, the petition must specify the name and the address, if known, of the other parent, if living.

(b) If the petition is signed by a guardian of the person, the petition must specify:

(i) The name and address, if known, of the parent or parents of the person, if living; or (ii) If both parents are deceased or their addresses are unknown, the names and addresses of the grandparents of the person, if living.

(3) For purposes of this section, "emancipated minor" means any minor who has been married or is in active military service.

History.

C.C.P. 1881, § 872; R.S., R.C., & C.L., § 5246; C.S., § 7425; I.C.A., § 13-802; am. 1975, ch. 63, § 1, p. 129; am. 1984, ch. 67, § 1, p. 117; am. 2017, ch. 191, § 1, p. 439.

STATUTORY NOTES

Cross References.

Contents of complaint in actions in district court, Idaho R. Civ. P. 7 through 9.

Proceedings to be in English language, Idaho R. Civ. P. 10(a)(3).

Statute of limitations applicable to special proceedings of a civil nature, § 5-240.

Successive applications for orders, Idaho R. Civ. P. 11(a)(2).

Amendments.

The 2017 amendment, by ch. 191, designated the existing provisions of the section as subsection (1); rewrote subsection (1), which formerly read: "All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under the age of eighteen (18) years, by one (1) of the parents, if living; or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence"; and added subsections (2) and (3).

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

§ 7-803. Publication of petition and notice. — (1) A notice of hearing of such petition signed by the clerk and issued under the seal of the court, must be published for four (4) successive weeks in a newspaper designated by the court as most likely to give notice in the county where the person whose name is proposed to be changed resides, and proofs must be made of such publication or posting before the petition can be considered. The notice of hearing may be substantially in the following form:

NOTICE OF HEARING

In the District Court of the .... Judicial District of the State of Idaho in and for .... County.

In the matter of the application of .... for change in name.

(Assertions herein contained refer to assertions in the petition) A petition by ...., now residing in the City of ...., State of Idaho, proposing a change in name to .... has been filed in the above entitled court, the reason for the change in name being .....

.....: such petition will be heard at such time as the court may appoint, and objections may be filed by any person who can, in such objections, show to the court a good reason against such a change of name.

WITNESS my hand and seal of said District Court this .... day of ....

....

Attorney for petitioner Clerk ....

Residence or post office address Deputy ..... Idaho.

(2) If the petition has been filed for a minor by a parent and the other parent, if living, does not join in consenting to the name change, the petitioner must cause notice of the time and place of the hearing to be served on the other parent not less than thirty (30) days before the hearing.

(3) If the petition has been filed for a minor by a guardian, the person filing the petition must cause notice of the time and place of the hearing to be served on the persons whose names and addresses were specified in the

petition pursuant to section 7-802(2)(b), Idaho Code, not less than thirty (30) days before the hearing.

History.

C.C.P. 1881, § 873; R.S., R.C., & C.L., § 5247; C.S., § 7426; I.C.A., § 13-803; am. 1945, ch. 32, § 1, p. 39; am. 2007, ch. 90, § 1, p. 246; am. 2010, ch. 250, § 1, p. 640; am. 2017, ch. 191, § 2, p. 439.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 90, inserted "(3)" in the first sentence.

The 2010 amendment, by ch. 250, rewrote the notice of hearing, removing reference to certain personal identifying information.

The 2017 amendment, by ch. 191, added "and notice" at the end of the section heading; designated the existing provisions of the section as subsection (1) and rewrote the introductory paragraph, which formerly read: "A notice of hearing of such petition signed by the clerk and issued under the seal of the court, must be published for four (4) successive weeks in some newspaper printed in the county, if a newspaper be printed therein, but if no newspaper be printed in the county a copy of such notice of hearing must be posted at three (3) of the most public places in the county for a like period, and proofs must be made of such publication or posting before the petition can be considered. The notice of hearing may be substantially in the following form"; and added subsections (2) and (3).

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Cited In re Toelkes, 97 Idaho 406, 545 P.2d 1012 (1976).

RESEARCH REFERENCES

Idaho Law Review. — Way out West: A Comment Surveying Idaho State's Legal Protection of Transgender and Gender Non-Conforming Individuals, Comment. 49 Idaho L. Rev. 587 (2013).

§ 7-804. Hearing and order. — Such application must be heard at such time during term as the court may appoint, and objections may be filed by any person who can, in such objections, show to the court good reason against such change of name. On the hearing the court may examine, upon oath, any of the petitioners, remonstrants or other persons touching the application, and may make an order changing the name or dismissing the application, as to the court may seem right and proper.

History.

C.C.P. 1881, § 874; R.S., R.C., & C.L., § 5248; C.S., § 7427; I.C.A., § 13-804.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Legitimacy of Child.

The changing of a child's name pursuant to § 7-801 et seq. from her father's surname to her mother's surname does not have any effect upon the child's legitimacy. In re Toelkes, 97 Idaho 406, 545 P.2d 1012 (1976).

RESEARCH REFERENCES

Idaho Law Review. — Way out West: A Comment Surveying Idaho State's Legal Protection of Transgender and Gender Non-Conforming Individuals, Comment. 49 Idaho L. Rev. 587 (2013).

§ 7-805. Restrictions on name changes for convicted sexual offenders — Notification of name changes of convicted sexual offenders. — (1) No person shall apply for a change of name with the intent or purpose of avoiding registration as a convicted sexual offender pursuant to chapter 83, title 18, Idaho Code. No name change shall be granted to any person if the name change would have the effect of relieving the person of the duty to register as a convicted sexual offender under chapter 83, title 18, Idaho Code, or under the provisions of similar laws enacted by another state.

(2) The court granting a name change to any individual required to register as a convicted sexual offender pursuant to the provisions of chapter 83, title 18, Idaho Code, shall provide notice of the name change to the Idaho state police, central sexual offender registry. This notice shall include the offender's name prior to change, new name, social security number, date of birth and last known address.

History.

I.C., § 7-805, as added by 1998, ch. 411, § 3, p. 1275; am. 2000, ch. 469, § 17, p. 1450.

STATUTORY NOTES

Cross References.

Central sexual offender registry, § 18-8305.

Idaho Code Ch. 9

Chapter 9
UNIFORM ARBITRATION ACT

Sec.

7-901. Validity of arbitration agreement.

7-902. Proceedings to compel or stay arbitration.

7-903. Appointment of arbitrators by court.

7-904. Majority action by arbitrators.

7-905. Hearing.

7-906. Representation by attorney.

7-907. Witnesses — Subpoenas — Depositions.

7-908. Award.

7-909. Change of award by arbitrators.

7-910. Fees and expenses of arbitration.

7-911. Confirmation of an award.

7-912. Vacating an award.

7-913. Modification or correction of award.

7-914. Judgment or decrees of award.

7-915. Judgment roll — Docketing.

7-916. Applications to court.

7-917. Court — Jurisdiction.

7-918. Venue.

7-919. Appeals.

7-920. Act not retroactive.

7-921. Uniformity of interpretation.

7-922. Short title.

§ 7-901. Validity of arbitration agreement. — A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act does not apply to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

History.

I.C., § 7-901, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Prior Laws.

Former chapter 9 which comprised C.C.P. 1881, §§ 875-884; R.S., R.C., & C.L., §§ 5260-5269; C.S., §§ 7428-7437; I.C.A., §§ 13-901 — 13-910, was repealed by S.L. 1975, ch. 117, § 1.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

CASE NOTES

Agreement enforced.

Application of chapter.

Attorney fees.

Claims against counties.

Jurisdiction.

Parties.

Agreement Enforced.

Because a dispute over the amount an insurer was obliged to pay fell within the scope of an arbitration clause in an insurance policy which called for an arbitrator to decide whether medical expenses were reasonable and necessary, the parties had agreed to arbitrate, and the insurer's motion to compel arbitration should have been granted. Mason v. State Farm Mut. Auto. Ins. Co., 145 Idaho 197, 177 P.3d 944 (2007).

Application of Chapter.

Where the record contained no showing that the arbitration was intended to, or did in fact, involve spiritual matters rather than secular disputes concerning the farm lease and other commercial arrangements, the mere fact that the arbitrators were members of the designated church did not, without more, place the arbitration proceedings beyond the broad subject matter scope of this chapter; thus, the arbitrators' decision was entitled to court confirmation under § 7-911. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

Arbitration agreement in insured's short-term health insurance policy was not unenforceable as unconscionable because there was no showing that the insured had limited ability to investigate other health insurance contracts in order to avoid those with arbitration clauses; the insured had purchased a similar contract in the past and, therefore, could not claim lack of notice of the policy's arbitration provision; the cost of arbitrating was not unreasonable given the insured's potential recovery because by right she could have recovered much of her costs if she prevailed in arbitration. Lovey v. Regence Blueshield of Idaho, 139 Idaho 37, 72 P.3d 877 (2003).

An agreement to arbitrate was unenforceable where large arbitration costs precluded the insured from effectively vindicating his federal statutory rights in the arbitral forum; the arbitration provision, which required each party to bear the cost of the arbitrator, plus the costs of witnesses and attorney fees, was unconscionable based upon the relatively small amount claimed under the policy by the insured. Murphy v. Mid-West Nat'l Life Ins. Co., 139 Idaho 330, 78 P.3d 766 (2003).

Review by a district court of an arbitration award is restricted to a determination of whether any grounds for relief stated in this chapter exists.

Reece v. U. S. Bancorp Piper Jaffray, Inc., 139 Idaho 487, 80 P.3d 1088 (2003).

Idaho Uniform Arbitration Act, § 7-901 et seq., rather than the Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., governed the parties' asset purchase agreement and employment agreements in arbitration proceedings pursuant to the clear language in the agreements stating that the agreement shall be construed in accordance with and governed for all purposes by the laws of the state of Idaho applicable to contracts executed and wholly-performed within the state. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Arbitration panel did not have authority to award attorney fees pursuant to American Arbitration Association (AAA) rules incorporated into an asset purchase agreement and Idaho statutory law because the agreement clearly stated that AAA rules governed procedural rather than substantive issues. Idaho law, which included the Idaho Uniform Arbitration Act, § 7-901 et seq., applied to interpretation of the parties' contract terms under the agreement and the parties contracted for a zero dollar amount or claim with respect to an award of attorney's fees. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act, § 7-901 et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed. Once a court enters an order confirming, modifying or correcting an award, a judgment or decree shall be entered and enforced as any other judgment. S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

Attorney Fees.

Attorney fees were not awarded where the party did little more than ask the appellate court to re-evaluate the well-reasoned opinion of the district court, arguing that the Idaho Uniform Arbitration Act (UAA), § 7-901 et seq., did not apply to his employment agreement. That argument ignored the language of § 7-901 that the UAA applied to employment contracts where the parties had so agreed and the parties had not so agreed in the case at bar. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Claims Against Counties.

The legislature, in passing the Uniform Arbitration Act, did not exempt governmental entities from its operation; thus, it appears that in Idaho there exists no statutory prohibition against a county's submission of a claim to arbitration but, rather, a strong public policy favors arbitration of disputes. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

The arbitration power of a county does not conflict with the right of a taxpayer to appeal claims paid by a county, because a taxpayer has that right only if a claim is allowed. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

A board of commissioners is forbidden to pay a claim asserted against it until certain procedures are followed; these procedures merely require a claim to be submitted to the commission before an aggrieved party can take further action and there is no reason why an aggrieved party cannot then submit his claim to arbitration rather than commencing a district court action. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Jurisdiction.

In action to enforce an arbitration agreement, district court's decision to decline jurisdiction on the ground that another action was pending in California was reasonable where none of the parties resided in Idaho and having a hand in the application of Idaho laws applicable to the arbitration was a negligible consideration for the court. Diet Ctr., Inc. v. Basford, 124 Idaho 20, 855 P.2d 481 (Ct. App. 1993).

Parties.

Compelling a nonparty to a contract containing an arbitration clause to submit to arbitration because the nonparty is an agent of one of the parties to the contract would be inconsistent with this section. Clearwater REI, LLC v. Boling, 155 Idaho 954, 318 P.3d 944 (2014).

Cited Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982); Wells v. Gootrad, 112 Idaho 912, 736 P.2d 1366 (Ct. App. 1987); Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993); Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048

(1994); Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995); Gumprecht v. Doyle, 128 Idaho 242, 912 P.2d 610 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arbitration and Award, § 1 et seq.

C.J.S. — 6 C.J.S., Arbitration, § 1 et seq.

ALR. — Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration. 5 A.L.R.3d 1008.

Appealability of judgment confirming or setting aside arbitration award. 7 A.L.R.3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements. 12 A.L.R.3d 854.

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction. 12 A.L.R.3d 892.

Validity and construction of provisions for arbitration of disputes as to alimony or support payments, or child visitation or custody matters. 38 A.L.R.5th 69.

Municipal corporation's power to submit to arbitration. 20 A.L.R.3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof. 24 A.L.R.3d 1325.

Delay in asserting contractual right to arbitration as precluding enforcement thereof. 25 A.L.R.3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator. 26 A.L.R.3d 604.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein. 32 A.L.R.3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability. 33 A.L.R.3d 1242.

Comment note on determination or validity of arbitration award under requirement that arbitrators shall pass on all matters submitted. 36 A.L.R.3d

649.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted. 36 A.L.R.3d 939.

Comment note on power of court to resubmit matter to arbitrators for correction or clarification, because of ambiguity or error in, or omission from, arbitration award. 37 A.L.R.3d 200.

Setting aside arbitration award on ground of interest or bias of arbitrators. 56 A.L.R.3d 697.

Construction and defect of contractual or statutory provisions fixing time within which arbitration award must be made. 56 A.L.R.3d 815.

Liability of parties to arbitration for costs, fees, and expenses. 57 A.L.R.3d 633.

State's court's power to consolidate arbitration proceedings. 64 A.L.R.3d 528.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration. 73 A.L.R.3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award. 75 A.L.R.3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award. 80 A.L.R.3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity. 83 A.L.R.3d 996.

Arbitrator's power to award putative damages. 83 A.L.R.3d 1037.

Laches or statute of limitations as bar to arbitration under agreement. 94 A.L.R.3d 533.

Appealability of state court's order or decree compelling or refusing to compel arbitration. 6 A.L.R.4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contain in contract. 11 A.L.R.4th 774.

Arbitration of medical malpractice claims. 24 A.L.R.5th 1.

Validity and effect under state law of arbitration agreement provision for alternative method of appointment of arbitrator where one party fails or refuses to follow appointment procedure specified in agreement. 75 A.L.R.5th 595.

Enforcement of arbitration agreement contained in construction contract by or against nonsignatory. 100 A.L.R.5th 481.

Validity and effect under Federal Arbitration Act (9 U.S.C.A. §§ 1 et seq.) of arbitration agreement provision for alternative method of appointment of arbitrator where one party fails or refuses to follow appointment procedure specified in agreement. 159 A.L.R. Fed. 1.

§ 7-902. Proceedings to compel or stay arbitration. — (a) On application of a party showing an agreement described in section 7-901, Idaho Code, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise and subject to section 7-918, Idaho Code, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

History.

I.C., § 7-902, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Access to courts.

Arbitrability.

Due process.

Judicial review.

Limitation of court's inquiry.

Access to Courts.

Application of the Uniform Arbitration Act did not violate plaintiff's right of access to the courts by precluding a meaningful review of the arbitrators' decision, as the plaintiff challenged the validity of the clause in her insurance contract that permitted the insurer to require binding arbitration by opposing its motion in district court to compel arbitration, but failed to preserve this option. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Arbitrability.

The question of arbitrability is a question of law properly for determination by the court. A court reviewing an arbitration clause will order arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts are to be resolved in favor of coverage. Storey Constr., Inc. v. Hanks, 148 Idaho 401, 224 P.3d 468 (2009).

Due Process.

Lack of a record and the arbitrators' failure to prepare written findings of fact and conclusions of law in arbitration under insurance contract did not deny plaintiff due process. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Judicial Review.

Where an examination of the record of the district court's hearing, at which the court found that a valid arbitration agreement existed, did not show that the court unduly restricted the appellant's right to present contrary evidence, nor that the court's finding of a valid agreement to arbitrate was clearly erroneous, the supreme court would not disturb the

district court's finding. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

An order granting a motion to stay arbitration is appealable, as a matter of right, under Idaho App. R. 11(a)(8). Clearwater REI, LLC v. Boling, 155 Idaho 954, 318 P.3d 944 (2014).

Limitation of Court's Inquiry.

When a district court entertains cross-motions to compel or stay arbitration under this section, the court's inquiry must be limited in scope to whether there is a valid agreement to arbitrate or not; it would be inappropriate for the court to review the merits of the dispute as such would in many instances emasculate the benefits of arbitration. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Cited Idaho First Bank v. Bridges, 164 Idaho 178, 426 P.3d 1278 (2018).

RESEARCH REFERENCES

ALR. — Application of equitable estoppel by nonsignatory to compel arbitration — Federal cases. 39 A.L.R. Fed. 2d 17.

Application of equitable estoppel against nonsignatory to compel arbitration under federal law. 43 A.L.R. Fed. 2d 275.

§ 7-903. Appointment of arbitrators by court. — If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

History.

I.C., § 7-903, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Appointment Appropriate.

In an insured's suit against an insurer for payment for medical treatment, a trial court erred in concluding that, based on a change in the American Arbitration Association's policy regarding appointment of an arbitrator, the entire arbitration agreement between the parties failed. There was no reason why the arbitration could not proceed with a different arbitrator, and the case was remanded for the appointment of an arbitrator pursuant to this section. Deeds v. Regence Blueshield of Idaho, 143 Idaho 210, 141 P.3d 1079 (2006).

§ 7-904. Majority action by arbitrators. — The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

History.

I.C., § 7-904, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

§ 7-905. Hearing. — Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

History.

I.C., § 7-905, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attendance.

Due process.

Attendance.

To vacate an award under § 7-912(a)(4), a party must demonstrate that the arbitrator was shown "sufficient cause" for postponement, and, it is not "sufficient cause" to merely be unable to attend a hearing when given

adequate notice. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Where a party waited until the day before a scheduled arbitration hearing to formally notify the arbitrator that she would be unable to attend the hearing due to alleged personal problems, even though she had been aware of the problems for at least three weeks, the arbitrator was not shown "sufficient cause" for postponement under § 7-912(a)(4) and the arbitrator's findings would not be vacated. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Due Process.

Due process does not necessarily require judicial action, but may be satisfied by fair arbitration proceedings. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

RESEARCH REFERENCES

ALR. — Consolidation by state court of arbitration proceedings brought under state law. 31 A.L.R.6th 433.

§ 7-906. Representation by attorney. — A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective.

History.

I.C., § 7-906, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

CASE NOTES

Cited Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

§ 7-907. Witnesses — Subpoenas — Depositions. — (a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the district court.

History.

I.C., § 7-907, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Cited Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

RESEARCH REFERENCES

ALR. — Discovery in federal arbitration proceedings under discovery provision of Federal Arbitration Act (FAA), 9 USC § 7, and Federal Rules of Civil Procedure, as permitted by Fed. R. Civ. P. 81(a)(6)(B). 45 A.L.R. Fed. 2d 51.

§ 7-908. Award. — (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

History.

I.C., § 7-908, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

No interest on award.

Written findings and conclusions.

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under § 28-22-104. Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Written Findings and Conclusions.

This section does not require written findings of fact or conclusions of law. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Decisions Under Prior Law Time for Making, Extension.

As a general rule, an award not made within time limited in agreement invalidates it, yet where one of the parties participates in proceedings without objection it will constitute waiver and have the effect of extending the time in which award can be made for at least a reasonable time after

hearings began. Rexburg Inv. Co. v. Dahle & Eccles Constr. Co., 36 Idaho 552, 211 P. 552 (1922).

§ 7-909. Change of award by arbitrators. — On application of a party or, if an application to the court is pending under sections 7-911, 7-912 or 7-913, Idaho Code, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of section 7-913, Idaho Code, or for the purpose of clarifying the award. The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to the provisions of sections 7-911, 7-912 and 7-913, Idaho Code.

History.

I.C., § 7-909, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Cited Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987); Schilling v. Allstate Ins. Co., 132 Idaho 927, 980 P.2d 1014 (1999).

§ 7-910. Fees and expenses of arbitration. — Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

History.

I.C., § 7-910, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attorney fees.

Authority of arbitrator.

Due process.

Prejudgment interest.

Recovery of costs.

Attorney Fees.

District court properly vacated arbitration panel's award of attorney fees on an earnings holdback claim in an asset purchase agreement because the agreement required that the parties were to bear their own costs and fees of arbitration, including specifically attorney fees. The panel's award of attorney fees on the holdback claim contravened that express language and was, therefore, beyond the scope of the arbitrators' authority. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

District court sufficiently referenced the key language of this section and its supporting case law to make application of the statute an issue properly before the appellate court on appeal when it held that an award of attorney fees was not within the arbitration panel's power to award absent a contractual provision and that there was a contractual provision and it provided just the opposite. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., is not intended to prevent enforcement of agreements to arbitrate under terms different than

those specified in the FAA; thus, the FAA did not trump application of this section regarding the award of attorney fees. Even if the FAA was applicable, it required enforcement of the parties' contract terms and the parties had expressly agreed that attorney fees would not be awarded. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Attorney fees can be awarded in an arbitration proceeding only if provided for in the parties' agreement to arbitrate. Barbee v. WMA Securities, Inc., 143 Idaho 391, 146 P.3d 657 (2006).

Authority of Arbitrator.

This section on its face militates against the power of an arbitrator to award attorney fees to one of the parties absent a contractual agreement to do so; accordingly, where no such agreement existed in the contract of the parties, it was beyond the power of the arbitrator to award such fees. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Absent agreement to the contrary, an arbitrator has authority and jurisdiction to award prejudgment interest. Schilling v. Allstate Ins. Co., 132 Idaho 927, 980 P.2d 1014 (1999), overruled on other grounds, Greenough v. Farm Bureau Mut. Ins. Co., 142 Idaho 589, 130 P.3d 1127 (2006) and Cranney v. Mutual of Enumclaw Ins. Co., 145 Idaho 6, 175 P.3d 168 (2007).

Arbitrator had authority under this section to award prejudgment interest since, in his first award, the arbitrator recognized that he had the authority and jurisdiction to award prejudgment interest and he recognized the insurer's argument that the compensatory damages award may be subject to subrogation for workers' compensation benefits, and the arbitrator properly calculated the maximum allowed by the contract without taking into consideration the workers' compensation claim or rights to subrogation. Am. Foreign Ins. Co. v. Reichert, 140 Idaho 394, 94 P.3d 699 (2004).

Due Process.

If a party wishes to take the precaution of preparing a record, it is not unreasonable to require the party to temporarily bear the cost. As in the judicial system, these costs may ultimately be awarded to the prevailing party; thus, the initial imposition of this cost upon one party is not sufficient

to constitute a denial of due process. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Prejudgment Interest.

Wolfe v. Farm Bureau Insurance Co., 128 Idaho 398, 913 P.2d 1168 (1996), and its progeny, are overruled insofar as they hold that this section either authorizes arbitrators to award prejudgment interest or requires prejudgment interest to be submitted to arbitrators along with other issues. This section has absolutely nothing to do with prejudgment interest. Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Recovery of Costs.

Insured could not recover costs and prejudgment interest incurred during arbitration in his motion for confirmation of the arbitration award or in his breach of insurance contract action. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Limitation set forth in this section did not limit a district court's authority to award attorney fees in proceedings to confirm an arbitration award given the very limited scope of challenges to an arbitration award. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

§ 7-911. Confirmation of an award. — Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 7-912 and 7-913, Idaho Code.

History.

I.C., § 7-911, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Appeal.

Application of section.

Arbitration.

No interest on award.

Appeal.

Because motion to confirm an arbitrator's award was filed, and granted, under this section, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of § 7-919. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

Application of Section.

Where the record contained no showing that the arbitration was intended to, or did in fact, involve spiritual matters rather than secular disputes concerning the farm lease and other commercial arrangements, the mere fact that the arbitrators were members of a designated church did not, without more, place the arbitration proceedings beyond the broad subject matter scope of this chapter; thus, the arbitrators, decision was entitled to court confirmation under this section. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

Insurer's payment in full of the arbitration award did not preclude insured from seeking confirmation of the award; confirmation request after payment of award did not create a moot question between insured and insurer and

did not divest jurisdiction from court to confirm award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act, § 7-901 et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed, and district court had jurisdiction to confirm insured's arbitration award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

An application seeking the confirmation of an arbitration award is not an action in court to recover attorney fees pursuant to § 41-1839. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Because no timely proceedings had been brought to vacate, modify, or correct the arbitration award, the district court was required to enter an order confirming it, even though all sums owing under the award had been paid. Storey Constr., Inc. v. Hanks, 148 Idaho 401, 224 P.3d 468 (2009).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act, § 7-901 et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed. Once a court enters an order confirming, modifying or correcting an award, a judgment or decree shall be entered and enforced as any other judgment. S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

Arbitration.

Once a judgment is entered by the court after an arbitration proceeding, that judgment is entitled to be treated in all respects as any other judgment; therefore, where adjudicatory procedures were present in the arbitration proceeding, the parties were given notice, they were able to formulate the issues of law and fact in their memos to the arbitrator, they had the right to

present evidence and legal arguments, and most importantly, the arbitration matter was deemed to be a final resolution between the parties, and where the record indicated the nature of the claims made by the parties, as well as the findings and conclusions, the judgment entered reflected the ultimate award entered by the arbitrator after the respective awards to parties were offset, and there had been a final judgment entered from which the courts could determine the applicability of the bar of collateral estoppel. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Judgment entered against plaintiff based on the arbitration award was a final judgment on the merits for the purposes of a collateral estoppel analysis, and the elements of collateral estoppel had been met. Thus, the district court was correct in granting summary judgment on the basis of issue preclusion. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Architect's decision in favor of the homeowner in a dispute with the contractor did not constitute an arbitration award for purposes of this section because the architect was not an arbitrator under the Idaho Uniform Arbitration Act; however, because the contractor failed to substantially comply with the demand for arbitration provision of the contract, the judgment was properly affirmed by the trial court because the architect's award became final and binding for failure to timely pursue arbitration. Martel v. Bulotti, 138 Idaho 451, 65 P.3d 192 (2003).

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under § 28-22-104(2). Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Cited Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008).

§ 7-912. Vacating an award. — (a) Upon application of a party, the court shall vacate an award where;[:]

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral, or corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 7-905, Idaho Code, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 7-902, Idaho Code, and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety (90) days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 7-903, Idaho Code, or, if the award is vacated on grounds set forth in clauses (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 7-903, Idaho Code. The time within

which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History.

I.C., § 7-912, as added by 1975, ch. 117, § 2, p. 240; am. 1990, ch. 65, § 1, p. 144.

STATUTORY NOTES

Compiler's Notes.

The bracketed colon in the introductory paragraph in subsection (a) was inserted by the compiler.

CASE NOTES

Access to courts.

Arbitrator exceeding powers.

Attorney's fees.

Due process.

Estoppel.

Grounds.

Insufficient cause.

Prejudgment interest.

Scope of review.

Sufficient cause.

Time limitation.

Waiver.

Access to Courts.

Application of the Uniform Arbitration Act, § 7-901 et seq., did not violate the plaintiff's right of access to the courts by precluding a meaningful review of the arbitrator's decision, as the plaintiff challenged the validity of the clause in her insurance contract that permitted the insurer to require binding arbitration by opposing its motion in district court to compel arbitration, but failed to preserve this option. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Arbitrator Exceeding Powers.

Normally, courts construe the phrase "exceeded his [their] powers" in subdivision (a)(3) of this section to mean that the arbitrator considered an issue not submitted to him by the parties, or exceeded the bounds of the contract between the parties. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Where the arbitrator, in a dispute between a county and an electrical contractor, made an award within the submission of the dispute of the parties, under a reasonable construction of the parties' contract, he did not exceed his powers; thus, the award of the arbitrator must be confirmed. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Because the arbitrator considered an issue that was clearly submitted to him and did not exceed any limitations contained in the parties' agreement, he did not exceed his powers in concluding that the element of causation was missing and entering an award granting judgment to attorney in a professional malpractice claim. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995).

Arbitrator's first award, in which he simply awarded the maximum prejudgment interest amount, was reinstated since by modifying his award, the arbitrator took into consideration that the insurer may be entitled to subrogation rights from the workers' compensation claim and, thus, exceeded the bounds of the contract between the parties. Am. Foreign Ins. Co. v. Reichert, 140 Idaho 394, 94 P.3d 699 (2004).

Attorney's fees.

The mere fact that an arbitrator's interpretation of a prior case is unsatisfactory to a party is not, of itself, a valid basis for appeal; thus, where

the nonprevailing party presented no cogent argument as to why settled law did not apply, the appeal was pursued frivolously and without foundation and attorney, prevailing in professional malpractice case, was entitled to attorney fees. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995).

District court properly vacated arbitration panel's award of attorney fees on an earnings holdback claim in an asset purchase agreement because the agreement required that the parties were to bear their own costs and fees of arbitration, including specifically attorney fees. The panel's award of attorney fees on the holdback claim contravened that express language and was, therefore, beyond the scope of the arbitrators' authority. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Denial of the claimant's request for an award of attorney fees was affirmed because, where the parties clearly submitted the issue of attorney fees for decision and the arbitrator determined the issue, the arbitrator did not exceed his powers; the appellate court would not review the propriety of the arbitrator's factual determinations or the correctness of his determinations regarding applicable Idaho law. Mumford v. Miller, 143 Idaho 99, 137 P.3d 1021 (2006).

Due Process.

Lack of a record and the arbitrators' failure to prepare written findings of fact and conclusions of law in arbitration under insurance contract did not deny plaintiff due process. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Estoppel.

Even where no arbitration agreement exists, a party belatedly objecting to binding arbitration is estopped. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Grounds.

An application filed under this section and 7-913 must identify the specific grounds upon which the court should vacate or modify the arbitration award within the 90-day time limit. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Insufficient Cause.

Magistrate did not err as a matter of law in entering a divorce decree containing property division provisions from an arbitration award without making specific findings of fact as to the character and value of the property divided and as to the fairness of the property division. Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

Purchaser of a company had not filed a proper motion to vacate or modify an arbitration award on claims against an escrow account arising from the sale of a company within the 90-day time limit set forth in this section where it had not identified any specific ground listed in this section for vacating the award before the 90-day deadline had passed, but had identified the specific ground in its brief filed after the 90-day time period had ended. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Prejudgment Interest.

Arbitration panel properly awarded prejudgment interest but not costs on an earnings holdback claim because the asset purchase agreement required the parties to bear their own fees and costs of arbitration but, the agreement did not preclude the arbitration panel from making an award of prejudgment interest on any claim arising out of the contract. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Scope of Review.

Judicial review of arbitrators' decisions is much more limited than review of a trial and an inquiry by a district court is limited to an examination of the award to discern if any of the grounds for relief stated in this section exist. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Judicial review of arbitrators' decisions is much more limited than review of a trial. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Review of the arbitrators' decision is governed and limited by this section. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Where the plaintiff, in district court, failed to present sufficient grounds to vacate the award against the uninsured motorist insurer under this section, the district judge properly confirmed the award. To grant de novo

review of the arbitrators' decision would annul the purpose of arbitration and accomplish indirectly what plaintiff was estopped to do directly. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Although a reviewing court might believe that some of the arbitrator's rulings are erroneous, the decision is nevertheless binding unless one of the grounds for relief set forth in this section is present. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995); Carroll v. MBNA Am. Bank, — Idaho —, 220 P.2d 1080 (2009).

Sufficient Cause.

To vacate an award under subdivision (a)(4) of this section, a party must demonstrate that the arbitrator was shown "sufficient cause" for postponement, and, it is not "sufficient cause" to merely be unable to attend a hearing when given adequate notice. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Where a party waited until the day before a scheduled arbitration hearing to formally notify the arbitrator that she would be unable to attend the hearing due to alleged personal problems, even though she had been aware of the problems for at least three weeks, the arbitrator was not shown "sufficient cause" for postponement under subdivision (a)(4) of this section and the arbitrator's findings would not be vacated. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Time Limitation.

The time limitation of subsection (b) of this section is strictly construed and must be complied with before a court can vacate any award, even if the party seeking to vacate the award asserts a valid ground under the act; a court cannot extend this 90-day period. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Because the time limit under subsection (b) of this section is strictly construed, failure to comply with that time limit raises an absolute bar to a motion to vacate. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Where county did not raise the ground asserted for vacation of arbitration award until nearly 11 months after the arbitrator's decision, the motion was

untimely and should have been denied by the trial court. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

A timely motion must be made, even if the party seeking to set aside the arbitrators' decision asserts a valid ground for doing so under this chapter; failure to comply with the 90-day time limit set forth in subsection (b) of this section raises an absolute bar to a motion to vacate under this section. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

No timely motion was ever made by the trucking company requesting relief from the arbitration award as subsection (b) of this section required a party seeking to vacate an arbitration award to file a motion in the district court within 90 days after delivery of a copy of the award; as a result, the trucking company did not preserve the issue for appeal. Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003).

Waiver.

The general rule is that participation in an arbitration hearing on the merits is a waiver of the right to raise the issue of arbitrability, unless preserved by a timely objection before a hearing on the merits. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Cited Hecla Mining Co. v. Bunker Hill Co., 101 Idaho 557, 617 P.2d 861 (1980).

Idaho Code § 7-913

§ 7-913. Modification or correction of award. — (a) Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History.

I.C., § 7-913, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attorney fees.

Exceeding scope of agreement.

Grounds.

Interest calculation.

Merits of the controversy.

No evident miscalculation.

Remand to arbitrator.

Time limitations.

Attorney Fees.

Attorney fees can be awarded in an arbitration proceeding only if provided for in the parties' agreement to arbitrate. Barbee v. WMA Securities, Inc., 143 Idaho 391, 146 P.3d 657 (2006).

Exceeding Scope of Agreement.

District court properly modified arbitration award where arbitrator exceeded the scope of the arbitration agreement by determining an insurance guarantee association's liability. Modification preserved the issues of causation and damages which were properly considered under the arbitration agreement. Norton v. California Ins. Guar. Ass'n, 143 Idaho 922, 155 P.3d 1161 (2007).

Grounds.

An application filed under § 7-912 and this section must identify the specific grounds upon which the court should vacate or modify the arbitration award within the 90-day time limit. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Interest Calculation.

Award of prejudgment interest in an arbitration award of benefits under an underinsured motorist policy, although arguably erroneous, could not be modified by a reviewing court because it was not a mathematical error. Cranney v. Mut. of Enumclaw Ins. Co., 145 Idaho 6, 175 P.3d 168 (2007).

Merits of the Controversy.

Where the relief claimed by employee was reconsideration of the factual conclusions of the arbitrator as to the extent of employer's liability, such relief could not be considered a correction of the form of the award "not affecting the merits of the controversy" as required by subdivision (a)(3) of this section. Landmark v. Mader Agency, Inc., 126 Idaho 74, 878 P.2d 773 (1994).

No Evident Miscalculation.

Arbitrator's February 16, 2001 award contained no evident miscalculation or misdescription pursuant to subdivision (a)(1) of this section where there was no mathematical error and the arbitrator was not to concern himself with the potential worker's compensation claim and/or the subrogation issues, and the parties agreed to allow the arbitrator to calculate

this type of award. Am. Foreign Ins. Co. v. Reichert, 140 Idaho 394, 94 P.3d 699 (2004).

Remand to Arbitrator.

The provision for modification of a procedurally imperfect award contained in subdivision (a)(3) of this section fails to provide an appropriate basis for remanding the award to the arbitrator for reconsideration. Landmark v. Mader Agency, Inc., 126 Idaho 74, 878 P.2d 773 (1994).

Time Limitations.

Record was devoid of any motion by the trucking company to modify the arbitrator's decision within the 90 day statutory period of subsection (1) of this section; therefore, the issue was not preserved for appeal. Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003).

Cited Hecla Mining Co. v. Bunker Hill Co., 101 Idaho 557, 617 P.2d 861 (1980); Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987); Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008).

Idaho Code § 7-914

§ 7-914. Judgment or decrees of award. — Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

History.

I.C., § 7-914, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Arbitration.

Attorney fees.

Award not in error.

In general.

No interest on award.

Arbitration.

Once a judgment is entered by the court after an arbitration proceeding, that judgment is entitled to be treated in all respects as any other judgment; therefore, where adjudicatory procedures were present in the arbitration proceeding, the parties were given notice, they were able to formulate the issues of law and fact in their memos to the arbitrator, they had the right to present evidence and legal arguments, and most importantly, the arbitration matter was deemed to be a final resolution between the parties, and where the record indicated the nature of the claims made by the parties, as well as the findings and conclusions, the judgment entered reflected the ultimate award entered by the arbitrator after the respective awards to parties were offset, and there had been a final judgment entered from which the courts could determine the applicability of the bar of collateral estoppel. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Judgment entered against plaintiff based on the arbitration award was a final judgment on the merits for the purposes of a collateral estoppel analysis, and the elements of collateral estoppel had been met. Thus, the district court was correct in granting summary judgment on the basis of issue preclusion. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Attorney Fees.

District court was allowed to consider an award of attorney fees under this section because interpreting "disbursements" to include attorney fees was consistent with the purposes of the Uniform Arbitration Act, § 7-901 et seq. and arbitration in general. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Owners of a company were granted attorney fees on a purchaser's appeal of an arbitration award on claims against an escrow account involving the sale of the company, where the purchaser appealed the award on grounds beyond the scope permitted by the Uniform Arbitration Act, § 7-901 et seq. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Insured appealing district court's modification of arbitration agreement was denied the award of attorney fees, since he was not the prevailing party below or on appeal. Norton v. California Ins. Guar. Ass'n, 143 Idaho 922, 155 P.3d 1161 (2007).

Where plaintiff filed a breach of contract action against defendants and defendants moved to compel arbitration, where discovery was conducted before the trial court ordered the matter to proceed to arbitration, and where defendants prevailed in arbitration, defendants were entitled to recover costs incurred in defending the litigation against them and in compelling arbitration. However, defendants were not entitled to recover attorney fees for the actual arbitration proceeding because such an award was prohibited by § 7-910; the district court did not err in declining to award attorney fees for proceedings for the confirmation of the arbitration award because such an award was discretionary under this section. The Grease Spot, Inc. v. Harnes, 148 Idaho 582, 226 P.3d 524 (2010).

Insurers could recover a discretionary award of attorney fees incurred responding to an untimely appeal. Harrison v. Certain Underwriters at

Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

Award Not In Error.

Magistrate did not err as a matter of law in entering a divorce decree containing property division provisions from an arbitration award without making specific findings of fact as to the character and value of the property divided and as to the fairness of the property division. Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

In General.

An application seeking the confirmation of an arbitration award is not an action in court to recover attorney fees pursuant to § 41-1839. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act, § 7-901 et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed. Once a court enters an order confirming, modifying or correcting an award, a judgment or decree shall be entered and enforced as any other judgment. S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under § 28-22-104. Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Cited Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008); Storey Constr., Inc. v. Hanks, 148 Idaho 401, 224 P.3d 468 (2009).

§ 7-915. Judgment roll — Docketing. — (a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award; (2) The award; (3) A copy of the order confirming, modifying or correcting the award; and (4) A copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

History.

I.C., § 7-915, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Cited Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

§ 7-916. Applications to court. — Except as otherwise provided, an application to the court under this act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

History.

I.C., § 7-916, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

§ 7-917. Court — Jurisdiction. — The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section 7-901, Idaho Code, providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this act and to enter judgment on an award thereunder.

History.

I.C., § 7-917, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

CASE NOTES

Confirmation.

No interest on award.

Confirmation.

Insurer's payment in full of the arbitration award did not preclude insured from seeking confirmation of the award; confirmation request after payment of award did not create a moot question between insured and insurer and did not divest jurisdiction from court to confirm award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act, § 7-901 et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed, and district court had jurisdiction to confirm insured's arbitration award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds,

Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

District court erred when it held that insured's second motion for confirmation of arbitration award, attorney fees, costs and prejudgment interest was barred by res judicata. Although parties agreed that district court lacked personal jurisdiction in insured's first motion for confirmation, since court lacked personal jurisdiction it did not have authority to rule on any substantive issues, such as subject matter jurisdiction, and insured's second confirmation motion was not barred. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under § 28-22-104. Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Cited S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

§ 7-918. Venue. — An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

History.

I.C., § 7-918, as added by 1975, ch. 117, § 2, p. 240.

§ 7-919. Appeals. — (a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under section 7-912, Idaho Code; (2) An order granting an application to stay arbitration made under section 7-902(b), Idaho Code; (3) An order confirming or denying confirmation of an award; (4) An order modifying or correcting an award; (5) An order vacating an award without directing a rehearing; or (6) A judgment or decree entered pursuant to the provisions of this act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

History.

I.C., § 7-919, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Cross References.

New trial in civil actions, Idaho Civil Procedure Rules 59(a) to 59(d).

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

CASE NOTES

Applicability.

Final appealable order.

Applicability.

Supreme court had jurisdiction to hear an appeal from an order dismissing a case alleging violations of the Idaho Consumer Protection Act, § 48-601 et seq., on the grounds that the parties had entered into a contract that included a provision requiring them to arbitrate disputes between them; although the order dismissed the case, it had the effect of compelling

arbitration. Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 (2005).

Because motion to confirm an arbitrator's award was filed, and granted, under § 7-911, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of this section. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

An order granting a motion to stay arbitration is appealable, as a matter of right, under Idaho App. R. 11(a)(8). Clearwater REI, LLC v. Boling, 155 Idaho 954, 318 P.3d 944 (2014).

Final Appealable Order.

An order denying a motion to compel arbitration or an order vacating an earlier order to arbitrate is final and is, therefore, appealable as a matter of right. Deeds v. Regence Blueshield of Idaho, 143 Idaho 210, 141 P.3d 1079 (2006).

RESEARCH REFERENCES

ALR. — Adoption of manifest disregard of law standard as nonstatutory ground to review arbitration awards governed by Uniform Arbitration Act (UAA). 14 A.L.R.6th 491.

§ 7-920. Act not retroactive. — This act applies only to agreements made subsequent to the taking effect of this act.

History.

I.C., § 7-920, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

§ 7-921. Uniformity of interpretation. — This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

I.C., § 7-921, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

§ 7-922. Short title. — This act may be cited as the "Uniform Arbitration Act."

History.

I.C., § 7-922, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as §§ 7-901 to 7-922.

Section 3 of S.L. 1975, ch. 117 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Idaho Code Ch. 10

Chapter 10
UNIFORM INTERSTATE FAMILY SUPPORT ACT

Sec.

7-1001. Short title.

7-1002. Definitions.

7-1003. State tribunal and support enforcement agency.

7-1004. Remedies cumulative.

7-1004A. Application of chapter to resident of foreign country and foreign support proceeding.

7-1005. Bases for jurisdiction over nonresident.

7-1006. Duration of personal jurisdiction.

7-1007. Initiating and responding tribunal of state.

7-1008. Simultaneous proceedings.

7-1009. Continuing, exclusive jurisdiction to modify child support order.

7-1010. Continuing jurisdiction to enforce child-support order.

7-1011. Determination of controlling child-support order.

7-1012. Child-support orders for two or more obligees.

7-1013. Credit for payments.

7-1014. Application of chapter to nonresident subject to personal jurisdiction.

7-1015. Continuing, exclusive jurisdiction to modify spousal support order.

7-1016. Proceedings under this chapter.

7-1017. Proceeding by minor parent.

7-1018. Application of law of this state.

7-1019. Duties of initiating tribunal.

7-1020. Duties and powers of responding tribunal.

7-1021. Inappropriate tribunal.

7-1022. Duties of support enforcement agency.

7-1023. Duty of attorney general.

7-1024. Private counsel.

7-1025. Duties of state information agency.

7-1026. Pleadings and accompanying documents.

7-1027. Nondisclosure of information in exceptional circumstances.

7-1028. Costs and fees.

7-1029. Limited immunity of petitioner.

7-1030. Nonparentage as defense.

7-1031. Special rules of evidence and procedure.

7-1032. Communications between tribunals.

7-1033. Assistance with discovery.

7-1034. Receipt and disbursement of payments.

7-1035. Establishment of support order.

7-1035A. Proceeding to determine parentage.

7-1036. Employer's receipt of income-withholding order of another state.

7-1037. Employer's compliance with income-withholding order of another state.

7-1038. Employer's compliance with two or more income-withholding orders.

7-1039. Immunity from civil liability.

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7-1058. Procedure to register child-support order of foreign country for modification.

7-1059. Definitions.

7-1060. Applicability.

7-1061. Relationship of department of health and welfare to United States central authority.

7-1062. Initiation by department of health and welfare of support proceeding under convention.

7-1063. Direct request.

7-1064. Registration of convention support order.

7-1065. Contest of registered convention support order.

7-1066. Recognition and enforcement of registered convention support order.

7-1067. Partial enforcement.

7-1068. Foreign support agreement.

7-1069. Modification of convention child-support order.

7-1070. Personal information — Limit on use.

7-1071. Record in original language — English translation.

7-1072. Grounds for rendition.

7-1073. Conditions of rendition.

7-1074. Uniformity of application and construction.

7-1075. Transitional provision.

7-1076. Severability.

7-1077 — 7-1089. [Repealed.]

§ 7-1001. Short title. — This chapter may be cited as the uniform interstate family support act.

History.

I.C., § 7-1051, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 37, p. 556; am. and redesig. 2006, ch. 252, § 1, p. 764.

STATUTORY NOTES

Cross References.

Wages of parents, assignment for child support, § 8-704.

Prior Laws.

Former §§ 7-1001 to 7-1020, which comprised S.L. 1951, ch. 238, §§ 1-21, p. 492, were repealed by S.L. 1953, ch. 246, § 27.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1058.

Compiler's Notes.

Former § 7-1001, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1002, pursuant to S.L. 2006, ch. 252, § 2.

The numbering of the Idaho version of the Uniform Interstate Family Support Act differs from the numbering of the official version as approved by the National Conference of Commissioners on Uniform State Laws in that the official version was numbered as §§ 101 to 903 and the Idaho version is numbered as §§ 7-1001 to 7-1062.

Following §§ 7-1001 through 7-1062, Uniform Interstate Family Support Act, appear "Official Comment" which are the comments prepared by National Conference of Commissioners on Uniform State Laws. These Comments are reprinted with the permission of the National Conference of Commissioners on Uniform State Laws.

In some instances the subsection, subdivision, *etc*. designations in the Idaho version of a section of the Uniform Interstate Family Support Act are different than those of the official version. For instance, § 7-1011, Idaho Code contains subsections (1) to (8) with subsection (2) containing subdivisions (a) to (c) and subdivision (b) containing clauses (i) and (ii). The official version of this provision, Section 207, contains subsections (a) to (h) with subsection (b) containing subdivisions (1) to (3) and subdivision (2) containing clauses (A) and (B). Therefore, a reference in the official comments to subsection (b)(2)(A) would be a reference to subsection (2)(b)(ii) in the Idaho version. In these instances, in the official comments, the compiler has added in brackets the references to the Idaho version of the section. Also the references in the official comments to "Act" should be translated as "Chapter" for the Idaho version and where the official comments refer to "Part" of a certain "Article" the corresponding reference to the Idaho version has been added in brackets.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

RESEARCH REFERENCES

Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

§ 7-1002. Definitions. — In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child-support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(a) Which has been declared under the law of the United States to be a foreign reciprocating country;

(b) Which has established a reciprocal arrangement for child support with this state as provided in section 7-1023, Idaho Code;

(c) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter; or

(d) In which the convention is in force with respect to the United States.

(6) "Foreign support order" means a support order of a foreign tribunal.

(7) "Foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country which is authorized to establish, enforce or modify support orders or to determine parentage of a child. The term includes a competent authority under the convention.

(8) “Home state” means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six (6) month or other period.

(9) “Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(10) “Income-withholding order” means an order or other legal process directed to an obligor’s employer or other debtor, as defined by chapter 12, title 32, Idaho Code, to withhold support from the income of the obligor.

(11) “Initiating tribunal” means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) “Issuing foreign country” means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) “Issuing state” means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(14) “Issuing tribunal” means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) “Law” includes decisional and statutory law and rules and regulations having the force of law.

(16) “Obligee” means:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(b) A foreign country, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or

which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(c) An individual seeking a judgment determining parentage of the individual's child; or

(d) A person that is a creditor in a proceeding under sections 7-1058 through 7-1071, Idaho Code.

(17) "Obligor" means an individual, or the estate of a decedent that:

(a) Owes or is alleged to owe a duty of support;

(b) Is alleged but has not been adjudicated to be a parent of a child;

(c) Is liable under a support order; or

(d) Is a debtor in a proceeding under sections 7-1058 through 7-1071, Idaho Code.

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) "Register" means to record in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(24) “Responding tribunal” means the authorized tribunal in a responding state or foreign country.

(25) “Spousal-support order” means a support order for a spouse or former spouse of the obligor.

(26) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) “Support enforcement agency” means a public official, governmental entity or private agency authorized to:

(a) Seek enforcement of support orders or laws relating to the duty of support;

(b) Seek establishment or modification of child support;

(c) Request determination of parentage of a child;

(d) Attempt to locate obligors or their assets; or

(e) Request determination of the controlling child-support order.

(28) “Support order” means a judgment, decree, order, decision or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

(29) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

History.

I.C., § 7-1001, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 1, p. 556; am. and redesig. 2006, ch. 252, § 2, p. 764; am. 2015 (1st E.S.), ch. 1, § 1, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1002 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1001 and updated the title reference in subsection (6); in subsection (7), deleted "or under a law or procedure substantially similar to the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act" from the end; in subsection (10), substituted "Issuing" for "Initiating"; added subsections (14) and (15), and redesignated the remaining subsections accordingly; in subsection (18), inserted "or procedure" and deleted "or under a law or procedure substantially similar to the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act" from the end; in the introductory paragraph in subsection (21), deleted "the Commonwealth of" preceding "Puerto Rico" and inserted "the United States Virgin Islands"; in the introductory paragraph in subsection (21)(b), substituted "country or political subdivision" for "jurisdiction"; added subsections (21)(b)(i) and (ii) and the subsection (19)(b)(iii) designation; in subsection (21)(b)(iii), deleted "or the procedures under the uniform reciprocal enforcement of support act or the revised uniform enforcement of support act" from the end; added subsection (22)(e); and in subsection (23), inserted "or directive" and "issued by a tribunal."

The 2015 (1st E.S.) amendment, by ch. 1, rewrote the section to the extent that a detailed comparison is impracticable.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the

important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1002, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1003, pursuant to S.L. 2006, ch. 252, § 3.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, §§ 73 to 75.

73 Am. Jur. 2d, Support of Persons, §§ 25 to 39.

C.J.S. — 41 C.J.S., Husband and Wife, § 322 et seq.

67A C.J.S., Parent and Child, § 73.

ALR. — Power of divorce court, after child obtained majority, to enforce by contempt proceedings payment of arrears of child support. 32 A.L.R.3d 888.

Long-arms statutes: obtaining jurisdiction over nonresident parent in filiation or support proceeding. 76 A.L.R.3d 708.

Determination of paternity of child as within scope of proceeding under Uniform Enforcement of Support Act. 81 A.L.R.3d 1175.

Laches or acquiescences as defense, so as to bar recovery of arrearages or permanent alimony or child support. 5 A.L.R.4th 1015.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Construction and application of Uniform Interstate Family Support Act. 90 A.L.R.5th 1.

§ 7-1003. State tribunal and support enforcement agency. — (1) The district courts are the tribunals of this state.

(2) The Idaho department of health and welfare is the support enforcement agency of this state.

History.

I.C., § 7-1002, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 3, p. 764; am. 2015 (1st E.S.), ch. 1, § 2, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1003 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2015 (1st E.S.) amendment, by ch. 1, substituted the present section heading for "Tribunals of this state", designated the existing provisions of the section as subsection (1), and added subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed

shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1003, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1004, pursuant to S.L. 2006, ch. 252, § 4.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1002.

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

CASE NOTES

Authority of Court.

Since the district court is permitted to delegate to attorney magistrates the authority granted it to hear paternity and child support cases, the magistrate court had subject matter jurisdiction to determine paternity, enter an order of filiation and order child support. State Dep't of Health & Welfare ex rel. Oregon v. Conley, 132 Idaho 266, 971 P.2d 332 (Ct. App. 1999).

§ 7-1004. Remedies cumulative. — (1) Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(2) This chapter does not:

(a) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(b) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

History.

I.C., § 7-1003, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 4, p. 764; am. 2015 (1st E.S.), ch. 1, § 3, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1004 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1003 and, in subsection (1), added "including the recognition of a support order of a foreign country or political subdivision on the basis of comity" and added subsection (2).

The 2015 (1st E.S.) amendment, by ch. 1, substituted "other law or the recognition of a foreign support order" for "other law, including the recognition of a support order of a foreign country or political subdivision" in subsection (1).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of

its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1004, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1005, pursuant to S.L. 2006, ch. 252, § 5.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or

circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1004A. Application of chapter to resident of foreign country and foreign support proceeding. — (1) A tribunal of this state shall apply sections 7-1001 through 7-1058, Idaho Code, and, as applicable, sections 7-1059 through 7-1071, Idaho Code, to a support proceeding involving:

(a) A foreign support order; (b) A foreign tribunal; or (c) An obligee, obligor or child residing in a foreign country.

(2) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of sections 7-1001 through 7-1058, Idaho Code.

(3) Sections 7-1059 through 7-1071, Idaho Code, apply only to a support proceeding under the convention. In such a proceeding, if a provision of sections 7-1059 through 7-1071, Idaho Code, is inconsistent with sections 7-1001 through 7-1058, Idaho Code, then sections 7-1059 through 7-1071, Idaho Code, control.

History.

I.C., § 7-1004A, as added by 2015 (1st E.S.), ch. 1, § 4, p. 5.

STATUTORY NOTES

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the

privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1005. Bases for jurisdiction over nonresident. — (1) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(a) The individual is personally served with notice within this state;

(b) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(c) The individual resided with the child in this state;

(d) The individual resided in this state and provided prenatal expenses or support for the child;

(e) The child resides in this state as a result of the acts or directives of the individual;

(f) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(g) The individual asserted parentage of a child in the registry maintained in this state by the vital statistics unit of the department of health and welfare provided in section 16-1513, Idaho Code; or

(h) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) The bases of personal jurisdiction set forth in subsection (1) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child-support order of another state unless the requirements of section 7-1053, Idaho Code, are met, or in the case of a foreign support order, unless the requirements of section 7-1057, Idaho Code, are met.

History.

I.C., § 7-1004, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 2, p. 556; am. and redesig. 2006, ch. 252, § 5, p. 764; am. 2015 (1st E.S.),

STATUTORY NOTES

Prior Laws.

Another former § 7-1005 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2015 (1st E.S.) amendment, by ch. 1, in subsection (1), inserted "of a child" in the introductory paragraph and in paragraph (g); and, in subsection (2), substituted "7-1053, Idaho Code, are met, or in the case of a foreign support order, unless the requirements of section 7-1057, Idaho Code, are met" for "or 7-1057" at the end.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor

proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1005, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1006, pursuant to S.L. 2006, ch. 252, § 6.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1004; in the introductory paragraph in subsection (1), deleted "or modify" following "enforce"; in subsection (1)(b), inserted "in a record"; and added subsection (2).

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

CASE NOTES

Applicability.

A resident of the state could not rely on this section to argue that the trial court lacked personal jurisdiction over him, since this section defines the

basis for the exercise of personal jurisdiction over nonresidents in proceedings to establish, enforce, or modify a support order or to determine parentage. State Dep't of Health & Welfare ex rel. Oregon v. Conley, 132 Idaho 266, 971 P.2d 332 (Ct. App. 1999).

Because the trial court relied on the conception of the child within Idaho and the fact that the father had previously resided in Idaho, not just the fact that the father had submitted to jurisdiction in the paternity case under former § 7-1026 [now § 7-1029], and because the child resided in Idaho with the mother, the State of Idaho had personal jurisdiction over the father pursuant to § 7-1004(5) and (6) [now § 7-1005(1)(e) and (1)(f)]. Lohman v. Flynn, 139 Idaho 312, 78 P.3d 379 (2003).

§ 7-1006. Duration of personal jurisdiction. — Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided in sections 7-1009, 7-1010 and 7-1015, Idaho Code.

History.

I.C., § 7-1005, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 3, p. 556; am. and redesig. 2006, ch. 252, § 6, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1006 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1005 and rewrote the section, which formerly read: "Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state."

Compiler's Notes.

Former § 7-1006, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1007, pursuant to S.L. 2006, ch. 252, § 7.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1007. Initiating and responding tribunal of state. — Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or foreign country.

History.

I.C., § 7-1006, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 7, p. 764; am. 2015 (1st E.S.), ch. 1, § 6, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1007 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1006.

The 2015 (1st E.S.) amendment, by ch. 1, in the section heading, deleted "this" preceding "state"; and, in the section text, inserted "a tribunal of" near the middle and "or foreign country" at the end.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the

privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1007, as enacted by Laws 1994, ch. 207, has been redesignated as § 7-1008, pursuant to S.L. 2006, ch. 252, § 17.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1008. Simultaneous proceedings. — (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

(a) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(b) The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(c) If relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(a) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) The contesting party timely challenges the exercise of jurisdiction in this state; and

(c) If relevant, the other state or foreign country is the home state of the child.

History.

I.C., § 7-1007, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 8, p. 764; am. 2015 (1st E.S.), ch. 1, § 7, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1008 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1007; in the section heading, deleted "in another state" from the end; and in the introductory paragraph in subsection (1), deleted "petition or comparable" preceding "pleading is filed in another state".

The 2015 (1st E.S.) amendment, by ch. 1, inserted "or a foreign country" for "or the foreign country" throughout the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents

in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1008, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1009, pursuant to S.L. 2006, ch. 252, § 9.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1009. Continuing, exclusive jurisdiction to modify child support order. — (1) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(a) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(2) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(a) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one (1) of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(b) Its order is not the controlling order.

(3) If a tribunal of another state has issued a child support order pursuant to this chapter or a law substantially similar to this chapter that modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(4) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in

the issuing tribunal.

History.

I.C., § 7-1008, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 4, p. 556; am. and redesig. 2006, ch. 252, § 9, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1009 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1008 and in the section heading, added "to modify child support order"; and rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Former § 7-1009, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1010, pursuant to S.L. 2006, ch. 252, § 10.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

CASE NOTES

Jurisdiction Present.

Court erred in finding that it did not have jurisdiction to hear a father's motion to modify the conditions of his child support obligation where the bureau of child support had initiated withholding from the father's income while he was incarcerated. State v. Smith, 136 Idaho 775, 40 P.3d 133 (Ct. App. 2001).

§ 7-1010. Continuing jurisdiction to enforce child-support order. — (1) A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(a) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the uniform interstate family support act; or

(b) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(2) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

History.

I.C., § 7-1009, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 10, p. 764; am. 2015 (1st E.S.), ch. 1, § 8, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1010 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1009; rewrote the section heading, which formerly read: "Enforcement and modification of support order by tribunal having continuing jurisdiction"; in the introductory paragraph in subsection (1), inserted "that has issued a child support order consistent with the law of this state," and deleted "or modify a support order issued in that state" from the end; added subsections (1)(a) and (1)(b); in subsection (2), deleted "exclusive" preceding "jurisdiction" and deleted the last sentence, which pertained to the receipt of evidence from another state and application of relevant code sections;

and deleted subsection (3), which pertained to modification of spousal support orders of another state.

The 2015 (1st E.S.) amendment, by ch. 1, in subsection (1), substituted "the uniform interstate family support act" for "this chapter" in paragraph (a) and inserted "of a tribunal" in paragraph (b).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made

to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1010, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1011, pursuant to S.L. 2006, ch. 252, § 11.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

CASE NOTES

In general.

Proper venue.

In General.

A support order made in an Idaho court in a Uniform Reciprocal Enforcement of Support Act case does not nullify an existing support order which has been entered in this state. Nomer v. Kossman, 100 Idaho 898, 606 P.2d 1002 (1980).

Proper Venue.

Other than in unusual circumstances, where the party required to pay support is found in Idaho, an appropriate proceeding should be brought in the court which entered the original decree. Nomer v. Kossman, 100 Idaho 898, 606 P.2d 1002 (1980).

§ 7-1011. Determination of controlling child-support order. — (1) If a proceeding is brought under this chapter and only one tribunal has issued a child-support order, the order of that tribunal controls and must be recognized.

(2) If a proceeding is brought under this chapter, and two or more child-support orders have been issued by tribunals of this state, another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(a) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls;

(b) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter:

(i) An order issued by a tribunal in the current home state of the child controls; or

(ii) If an order has not been issued in the current home state of the child, the order most recently issued controls;

(c) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state shall issue a child-support order, which controls.

(3) If two or more child-support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (2) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to sections 7-1043 through 7-1058, Idaho Code, or may be filed as a separate proceeding.

(4) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the

applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(5) The tribunal that issued the controlling order under subsection (1), (2) or (3) of this section has continuing jurisdiction to the extent provided in section 7-1009 or 7-1010, Idaho Code.

(6) A tribunal of this state that determines by order which is the controlling order under subsection (2)(a) or (2)(b) or (3) of this section or that issues a new controlling order under subsection (2)(c) of this section, shall state in that order:

(a) The basis upon which the tribunal made its determination;

(b) The amount of prospective support, if any; and

(c) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided in section 7-1013, Idaho Code.

(7) Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(8) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

History.

I.C., § 7-1010, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 5, p. 556; am. and redesig. 2006, ch. 252, § 11, p. 764; am. 2015 (1st E.S.), ch. 1, § 9, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1011 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1010; in the section heading, substituted "Determination" for "Recognition"; and rewrote the section to the extent that a detailed comparison is impracticable.

The 2015 (1st E.S.) amendment, by ch. 1, in subsection (2), substituted "state, another state or a foreign country" for "state or another state" near the middle and added "and must be recognized" at the end of the introductory paragraph and deleted "and must be so recognized" from the end of paragraph (a).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor

proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1011, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1012, pursuant to S.L. 2006, ch. 252, § 12.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1012. Child-support orders for two or more obligees. — In responding to registrations or petitions for enforcement of two or more child-support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

History.

I.C., § 7-1011, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 12, p. 764; am. 2015 (1st E.S.), ch. 1, § 10, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1012 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1011, deleted "multiple" from the beginning of the section heading; and deleted "multiple" preceding "registrations" and "orders had been issued."

The 2015 (1st E.S.) amendment, by ch. 1, inserted "or a foreign country" near the end of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health

and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1012, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1013, pursuant to S.L. 2006, ch. 252, § 13.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

Idaho Code § 7-1013

§ 7-1013. Credit for payments. — A tribunal of this state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this state, another state or a foreign country.

History.

I.C., § 7-1012, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 13, p. 764; am. 2015 (1st E.S.), ch. 1, § 11, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1013 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1012 and rewrote the section, which formerly read: "Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state."

The 2015 (1st E.S.) amendment, by ch. 1, substituted "this state, another state or a foreign country" for "this or another state" at the end of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the

processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1013, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1016, pursuant to S.L. 2006, ch. 252, § 16.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1014. Application of chapter to nonresident subject to personal jurisdiction. — A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to section 7-1031, Idaho Code, communicate with a tribunal outside this state pursuant to section 7-1032, Idaho Code, and obtain discovery through a tribunal outside this state pursuant to section 7-1033, Idaho Code. In all other respects, sections 7-1016 through 7-1058, Idaho Code, do not apply and the tribunal shall apply the procedural and substantive law of this state.

History.

I.C., § 7-1014, as added by 2006, ch. 252, § 14, p. 764; am. 2015 (1st E.S.), ch. 1, § 12, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1014 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2015 (1st E.S.) amendment, by ch. 1, substituted "foreign support order" for "support order of a foreign country or political subdivision on the basis of comity" and substituted "outside this state" for "another state" in three places in the first sentence.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the

important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1014, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1017, pursuant to S.L. 2006, ch. 252, § 17.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1015. Continuing, exclusive jurisdiction to modify spousal support order. — (1) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(2) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(3) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(a) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(b) A responding tribunal to enforce or modify its own spousal support order.

History.

I.C., § 7-1015, as added by 2006, ch. 252, § 15, p. 764; am. 2015 (1st E.S.), ch. 1, § 13, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1015 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2015 (1st E.S.) amendment, by ch. 1, inserted “or a foreign country” and “or foreign country” in subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: “Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement

responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1015, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1018, pursuant to S.L. 2006, ch. 252, § 17.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

CASE NOTES

Applicability.

Spousal support obligation arose from a contract between the parties, and the provision was not incorporated into the divorce decree. This section was not applicable. Davidson v. Soelberg, 154 Idaho 227, 296 P.3d 433 (Ct. App. 2013).

§ 7-1016. Proceedings under this chapter. — (1) Except as otherwise provided in this chapter, sections 7-1016 through 7-1034, Idaho Code, apply to all proceedings under the provisions of this chapter.

(2) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

History.

I.C., § 7-1013, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 6, p. 556; am. and redesig. 2006, ch. 252, § 16, p. 764; am. 2015 (1st E.S.), ch. 1, § 14, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1016 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1013; deleted former subsection (2), which was a listing of proceedings provided for by chapter 10; and redesignated former subsection (3) as (2) and therein substituted "initiate" for "commence."

The 2015 (1st E.S.) amendment, by ch. 1, inserted "or a foreign country" near the end of subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and

others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1016, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1019, pursuant to S.L. 2006, ch. 252, § 19.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1017. Proceeding by minor parent. — A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

History.

I.C., § 7-1014, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 17, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1017 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1014 and, in the section heading, substituted "Proceeding" for "Action."

Compiler's Notes.

Former § 7-1017, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1020, pursuant to S.L. 2006, ch. 252, § 20.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1018. Application of law of this state. — Except as otherwise provided in this chapter, a responding tribunal of this state shall:

(1) Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and (2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

History.

I.C., § 7-1015, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 18, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1018 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1015 and deleted "including the rule on choice of law" following "substantive law" in subsection (1).

Compiler's Notes.

Former § 7-1018, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1021, pursuant to S.L. 2006, ch. 252, § 21.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1019. Duties of initiating tribunal. — (1) Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(a) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

History.

I.C., § 7-1016, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 7, p. 556; am. and redesig. 2006, ch. 252, § 19, p. 764; am. 2015 (1st E.S.), ch. 1, § 15, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1019 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1016, in the introductory paragraph in subsection (1), deleted “three (3) copies of” preceding “the petition”; and in subsection (2), substituted “If requested by the responding tribunal” for “If a responding state has not enacted this chapter or a law or procedure substantially similar to this chapter” and

"shall issue" for "may issue" in the first sentence and rewrote the last sentence which formerly read: "If the respondent state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

The 2015 (1st E.S.) amendment, by ch. 1, in the second sentence in subsection (2), substituted "tribunal is in a foreign country" for "state is a foreign country or political subdivision" near the beginning and substituted "foreign tribunal" for "state" at the end.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such

proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1019, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1022, pursuant to S.L. 2006, ch. 252, § 22.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

Idaho Code § 7-1020

§ 7-1020. Duties and powers of responding tribunal. — (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 7-1016(2), Idaho Code, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(a) Establish or enforce a support order, modify a child-support order, determine the controlling child-support order, or determine parentage of a child;

(b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) Order income withholding;

(d) Determine the amount of any arrearages, and specify a method of payment;

(e) Enforce orders by civil or criminal contempt, or both;

(f) Set aside property for satisfaction of the support order;

(g) Place liens and order execution on the obligor's property;

(h) Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) Order the obligor to seek appropriate employment by specified methods;

(k) Award reasonable attorney's fees and other fees and costs; and

(*l*) Grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(6) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

History.

I.C., § 7-1017, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 8, p. 556; am. and redesig. 2006, ch. 252, § 20, p. 764; am. 2015 (1st E.S.), ch. 1, § 16, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1020 was repealed. See Prior Laws, § 7-1001.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1017; updated the section reference in subsection (1); in the introductory paragraph in subsection (2), substituted "not prohibited by other law" for "otherwise authorized by law"; in subsection (2)(a), inserted "determine the controlling child support order" and deleted "render a judgment" preceding "to determine parentage"; and added subsection (6).

The 2015 (1st E.S.) amendment, by ch. 1, in subsection (2), substituted "Establish" for "Issue" at the beginning and added "of a child" at the end of

paragraph (a) and inserted "electronic mail address" near the middle of paragraph (h).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1020, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1023, pursuant to S.L. 2006, ch. 252, § 23.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1021. Inappropriate tribunal. — If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

History.

I.C., § 7-1018, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 9, p. 556; am. and redesig. 2006, ch. 252, § 21, p. 764; am. 2015 (1st E.S.), ch. 1, § 17, p. 5.

STATUTORY NOTES

Prior Laws.

Other former §§ 7-1021 to 7-1047, which comprised S.L. 1953, ch. 246, §§ 1 to 30, p. 379, were repealed by S.L. 1959, ch. 135, § 37, p. 284.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1018 and substituted "the tribunal" for "it."

The 2015 (1st E.S.) amendment, by ch. 1, substituted "tribunal of this state" for "tribunal in this state" near the end of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop

and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1021, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1024, pursuant to S.L. 2006, ch. 252, § 24.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1022. Duties of support enforcement agency. — (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(2) A support enforcement agency of this state that is providing services to the petitioner shall:

(a) Take all steps necessary to enable an appropriate tribunal of this state, another state or a foreign country to obtain jurisdiction over the respondent;

(b) Request an appropriate tribunal to set a date, time and place for a hearing;

(c) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(e) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(f) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(a) To ensure that the order to be registered is the controlling order; or

(b) If two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(4) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign

currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(5) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 7-1034, Idaho Code.

(6) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

History.

I.C., § 7-1019, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 10, p. 556; am. and redesig. 2006, ch. 252, § 22, p. 764; am. 2015 (1st E.S.), ch. 1, § 18, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1022 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1019; in subsections (2)(d) and (e), substituted "notice in a record" and "communication in a record" for "a written notice" and "a written communication"; and added subsections (3) to (5); and redesignated former subsection (3) as (6).

The 2015 (1st E.S.) amendment, by ch. 1, substituted "of this state, another state or a foreign country" for "in this state or another state" in subsection (2)(a).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of

its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1022, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1025, pursuant to S.L. 2006, ch. 252, § 25.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or

circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

Official Comment

The focus of Subsection (a) [(1)] is on providing services to a petitioner, and not merely on "representing" the obligee. Care should be exercised in the use of terminology given this substantial alteration of past practice under RURESA. Not only may either the obligee or the obligor request services, but that request may be in the context of the establishment of an initial child-support order, enforcement or review and adjustment of an existing child-support order, or a modification of that order (upward or downward). Note that the Act does not distinguish between child support and spousal support for purposes of providing services. Note also, that the services available may differ significantly; for example, modification of spousal support is limited to the issuing State, see Section 205(f) [§ 7-1015], *supra*.

§ 7-1023. Duty of attorney general. — (1) If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

(2) The attorney general may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

History.

I.C., § 7-1020, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 23, p. 764; am. 2015 (1st E.S.), ch. 1, § 19, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1023 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1020; added the subsection (1) designation; and added subsection (2).

The 2015 (1st E.S.) amendment, by ch. 1, deleted "or political subdivision" following "foreign country" in subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health

and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1023, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1026, pursuant to S.L. 2006, ch. 252, § 26.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1024. Private counsel. — An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

History.

I.C., § 7-1021, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 24, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1024 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1021, pursuant to S.L. 2006, ch. 252, § 24.

Compiler's Notes.

Former § 7-1024, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1027, pursuant to S.L. 2006, ch. 252, § 27.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Idaho Code § 7-1025

§ 7-1025. Duties of state information agency. — (1) The central registry in the bureau of child support [bureau of child support services] of the department of health and welfare is the state information agency under this chapter.

(2) The state information agency shall:

(a) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(c) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from another state or a foreign country; and

(d) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

History.

I.C., § 7-1022, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 25, p. 764; am. 2015 (1st E.S.), ch. 1, § 20, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1025 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1022; in subsection (2)(b), inserted "names and addresses of"; and, in subsection (2)(c), substituted "county" for "place" and "obligee who is an individual" for "individual obligee."

The 2015 (1st E.S.) amendment, by ch. 1, substituted "another state or a foreign country" for "an initiating tribunal or the state information agency of the initiating state" at the end of subsection (2)(c).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support

and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1025, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1028, pursuant to S.L. 2006, ch. 252, § 28.

The bracketed insertion in subsection (1) was added by the compiler to correct the state agency name.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1026. Pleadings and accompanying documents. — (1) In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under section 7-1027, Idaho Code, the petition or accompanying documents must provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

History.

I.C., § 7-1023, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 26, p. 764; am. 2007, ch. 320, § 1, p. 960; am. 2015 (1st E.S.), ch. 1, § 21, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1026 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1023 and rewrote subsection (1), which formerly read: “A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise

ordered under section 7-1024, Idaho Code, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent."

The 2007 amendment, by ch. 320, twice inserted "social security number" in the second sentence in subsection (1).

The 2015 (1st E.S.) amendment, by ch. 1, rewrote the first sentence in subsection (1), which formerly read: "In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage, or to register and modify a support order of another state must file a petition."

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1026, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1029, pursuant to S.L. 2006, ch. 252, § 29.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1027. Nondisclosure of information in exceptional circumstances. — If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

History.

I.C., § 7-1024, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 27, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1027 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered the section from § 7-1024 and rewrote the section, which formerly read: "Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter."

Compiler's Notes.

Former § 7-1027, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1030, pursuant to S.L. 2006, ch. 252, § 30.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1028. Costs and fees. — (1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 7-1043 through 7-1058, Idaho Code, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

History.

I.C., § 7-1025, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 11, p. 556; am. and redesig. 2006, ch. 252, § 28, p. 764; am. 2015 (1st E.S.), ch. 1, § 22, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1028 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1025 and updated the section references in subsection (3).

The 2015 (1st E.S.) amendment, by ch. 1, in subsection (2), inserted "of this state" near the beginning of the first sentence and "or foreign country"

near the end of the second sentence; and updated a section reference in subsection (3).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1028, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1031, pursuant to S.L. 2006, ch. 252, § 31.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1029. Limited immunity of petitioner. — (1) Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while physically present in this state to participate in the proceeding.

History.

I.C., § 7-1026, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 29, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1029 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1026; in subsection (1), inserted "under this chapter"; and, in subsection (3), inserted "physically."

Compiler's Notes.

Former § 7-1029, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1032, pursuant to S.L. 2006, ch. 252, § 32.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

CASE NOTES

Immunity not applicable.

Personal jurisdiction.

Immunity Not Applicable.

Because the trial court relied on the conception of the child within Idaho and the fact that the father had previously resided in Idaho, not just the fact that the father had submitted to jurisdiction in a paternity case under former § 7-1026, and because the child resided in Idaho with the mother, the state had personal jurisdiction over the father pursuant to former § 7-1004(5) and (6) [now § 7-1005(1)(e) and (f)]. Lohman v. Flynn, 139 Idaho 312, 78 P.3d 379 (2003).

Personal Jurisdiction.

A magistrate court did not have personal jurisdiction over a father, to enter an order establishing a sum owed to the mother under his military pension, because, while the father registered the parties' Colorado divorce decree with the Idaho courts, he had never lived in Idaho and his only contacts with Idaho were related to child custody and child support proceedings. Wilson v. King, 160 Idaho 344, 372 P.3d 399 (2016).

§ 7-1030. Nonparentage as defense. — A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

History.

I.C., § 7-1027, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 30, p. 764.

STATUTORY NOTES

Prior Laws.

Another former § 7-1030 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1027.

Compiler's Notes.

Former § 7-1030, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1033, pursuant to S.L. 2006, ch. 252, § 33.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Idaho Code § 7-1031

§ 7-1031. Special rules of evidence and procedure. — (1) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(2) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(3) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten (10) days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based upon the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

(10) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

History.

I.C., § 7-1028, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 31, p. 764; am. 2015 (1st E.S.), ch. 1, § 23, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1031 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1028; in subsection (1), substituted "a nonresident party who is an individual in a tribunal" for "the petitioner in a responding tribunal"; in subsection (2), deleted "A verified petition" from the beginning, substituted "or a document" for "and a document" and "under penalty of perjury" for "under oath"; in subsection (5), substituted "record" for "writing"; in subsection (6), substituted "shall permit" for "may permit," and inserted "under penalty of perjury"; and added subsection (10).

The 2015 (1st E.S.) amendment, by ch. 1, inserted "of a child" in subsections (1) and (4), substituted "outside this state" for "in another" in subsections (2), (5) and (6); inserted "electronic" near the middle of subsection (5); and, in subsection (6), deleted "in that state" at the end of the first sentence and substituted "other tribunals" for "tribunals of other states" in the last sentence.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement

responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1031, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1034, pursuant to S.L. 2006, ch. 252, § 34.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015

§ 7-1032. Communications between tribunals. — A tribunal of this state may communicate with a tribunal outside this state in a record, or by telephone, electronic mail or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

History.

I.C., § 7-1029, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 32, p. 764; am. 2015 (1st E.S.), ch. 1, § 24, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1032 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1029; inserted "or foreign country or political subdivision" three times; and, in the first sentence, substituted "in a record" for "in writing."

The 2015 (1st E.S.) amendment, by ch. 1, rewrote the section, which formerly read: "A tribunal of this state may communicate with a tribunal of another state or foreign country or political subdivision in a record, or by telephone or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state or foreign country or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state or foreign country or political subdivision."

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be

they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1032, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1035, pursuant to S.L. 2006, ch. 252, § 35.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015

§ 7-1033. Assistance with discovery. — A tribunal of this state may:

(1) Request a tribunal outside this state to assist in obtaining discovery; and (2) Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

History.

I.C., § 7-1030, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 33, p. 764; am. 2015 (1st E.S.), ch. 1, § 25, p. 5.

STATUTORY NOTES

Prior Laws.

Another former § 7-1033 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1030.

The 2015 (1st E.S.) amendment, by ch. 1, substituted "outside this state" for "of another state" in subsections (1) and (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject

of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1033, as enacted by Laws 1994, ch. 207, § 2, has been redesignated as § 7-1036, pursuant to S.L. 2006, ch. 252, § 36.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015

§ 7-1034. Receipt and disbursement of payments. — (1) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(2) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(a) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(b) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(3) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (2) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

History.

I.C., § 7-1031, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 34, p. 764; am. 2015 (1st E.S.), ch. 1, § 26, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1034 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1031; added the subsection (1) designation; and added subsections (2) and

(3).

The 2015 (1st E.S.) amendment, by ch. 1, inserted "or a foreign country" in the last sentence in subsection (1).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1034, as enacted by Laws 1997, ch. 198, § 13, has been redesignated as § 7-1037, pursuant to S.L. 2006, ch. 252, § 37.

Another former § 7-1034, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1039 by § 18 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1042 by S.L. 2006, ch. 252, § 42.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015

§ 7-1035. Establishment of support order. — (1) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(a) The individual seeking the order resides outside this state; or

(b) The support enforcement agency seeking the order is located outside this state.

(2) The tribunal may issue a temporary child-support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(a) A presumed father of the child;

(b) Petitioning to have his paternity adjudicated;

(c) Identified as the father of the child through genetic testing;

(d) An alleged father who has declined to submit to genetic testing;

(e) Shown by clear and convincing evidence to be the father of the child;

(f) An acknowledged father as provided by section 7-1106, Idaho Code;

(g) The mother of the child; or

(h) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 7-1020, Idaho Code.

History.

I.C., § 7-1032, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 2006, ch. 252, § 35, p. 764; am. 2015 (1st E.S.), ch. 1, § 27, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1035 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1032; and in the introductory paragraph in subsection (2), added "the tribunal determines that such order is appropriate and the individual ordered to pay is"; rewrote subsections (2)(a) to (c), which formerly read: "(a) The respondent has signed a verified statement acknowledging parentage;

"(b) The respondent has been determined by or pursuant to law to be the parent; or

"(c) There is other clear and convincing evidence that the respondent is the child's parent";

added subsections (2)(d) to (h); and updated the section reference in subsection (3).

The 2015 (1st E.S.) amendment, by ch. 1, rewrote the section heading, which formerly read: "Petition to establish support order"; inserted "with personal jurisdiction over the parties" near the end of the introductory paragraph in subsection (1); substituted "outside this state" for "in another state" in paragraphs (a) and (b) of subsection (1); substituted "section 7-1106, Idaho Code" for "applicable state law" at the end of paragraph (2)(f).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the

privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1035, as enacted by Laws 1997, ch. 198, § 14, has been redesignated as § 7-1038, pursuant to S.L. 2006, ch. 252, § 38.

Another former § 7-1035, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1040 by § 19 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1043 by S.L. 2006, ch. 252, § 43.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015

§ 7-1035A. Proceeding to determine parentage. — A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this act or a law or procedure substantially similar to this act.

History.

I.C., § 7-1035A, as added by 2015 (1st E.S.), ch. 1, § 28, p. 5.

STATUTORY NOTES

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the

2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1036. Employer's receipt of income-withholding order of another state. — An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer under the provisions of chapter 12, title 32, Idaho Code, without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

History.

I.C., § 7-1033, as added by 1994, ch. 207, § 2, p. 639; am. 1997, ch. 198, § 12, p. 556; am. and redesig. 2006, ch. 252, § 36, p. 764.

STATUTORY NOTES

Prior Laws.

A former § 7-1036 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1033; inserted "by or on behalf of the obligee, or by the support enforcement agency," and updated the title reference.

Compiler's Notes.

Former § 7-1036, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1041 by § 20 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1045 by S.L. 2006, ch. 252, § 45.

Another former § 7-1036, as enacted by Laws 1997, ch. 198, § 15, has been redesignated as § 7-1039, pursuant to S.L. 2006, ch. 252, § 39.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1037. Employer's compliance with income-withholding order of another state. — (1) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(2) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(3) Except as otherwise provided in subsection (4) of this section and section 7-1038, Idaho Code, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

(a) The duration and amount of periodic payments of current child support, stated as a sum certain;

(b) The person designated to receive payments and the address to which the payments are to be forwarded;

(c) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) The employer's fee for processing an income-withholding order;

(b) The maximum amount permitted to be withheld from the obligor's income; and

(c) The time periods within which the employer must implement the withholding order and forward the child support payment.

History.

I.C., § 7-1034, as added by 1997, ch. 198, § 13, p. 556; am. and redesig. 2006, ch. 252, § 37, p. 764.

STATUTORY NOTES

Prior Laws.

A former § 7-1037 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1034; in subsection (1), inserted "an income-withholding"; in subsection (3)(b), deleted "or agency" following "person"; and, in subsection (3)(e), twice substituted "arrearages" for "arrears."

Compiler's Notes.

Former § 7-1037, as enacted by Laws 1997, ch. 198, § 16, has been redesignated as § 7-1040, pursuant to S.L. 2006, ch. 252, § 40.

Another former § 7-1037, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1042 by § 21 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1045 by S.L. 2006, ch. 252, § 45.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1038. Employer's compliance with two or more income-withholding orders. — If an obligor's employer receives two (2) or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two (2) or more child support obligees.

History.

I.C., § 7-1035, as added by 1997, ch. 198, § 14, p. 556; am. and redesig. 2006, ch. 252, § 38, p. 764.

STATUTORY NOTES

Prior Laws.

A former § 7-1038 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1035; in the section heading, added "Employer's" and substituted "two or more" for "multiple"; in the text, twice substituted "two (2) or more" for "multiple," substituted "income-withholding orders" for "orders to withhold support from," and inserted "the employer complies with" preceding "the law of the state."

Compiler's Notes.

Former § 7-1038, as enacted by Laws 1997, ch. 198, § 17, has been redesignated as § 7-1041, pursuant to S.L. 2006, ch. 252, § 41.

Another former § 7-1038, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1043 by § 22 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1046 by S.L. 2006, ch. 252, § 46.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1039. Immunity from civil liability. — An employer that complies with an income-withholding order issued in another state in accordance with sections 7-1036 through 7-1042, Idaho Code, is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

History.

I.C., § 7-1036, as added by 1997, ch. 198, § 15, p. 556; am. and redesig. 2006, ch. 252, § 39, p. 764; am. 2015 (1st E.S.), ch. 1, § 29, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1039 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1036 and substituted "sections 7-1036 through 7-1042" for "this article."

The 2015 (1st E.S.) amendment, by ch. 1, substituted "employer that" for "employer who" near the beginning of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the

privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1039, enacted as § 7-1034, by Laws 1994, ch. 207, § 2, and redesignated as § 7-1039 by Laws 1997, ch. 198, § 18, has been redesignated as § 7-1042, pursuant to S.L. 2006, ch. 252, § 42.

Another former § 7-1039, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1044 by § 23 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1047 by S.L. 2006, ch. 252, § 47.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1040. Penalties for noncompliance. — An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

History.

I.C., § 7-1037, as added by 1997, ch. 198, § 16, p. 556; am. and redesig. 2006, ch. 252, § 40, p. 764; am. 2015 (1st E.S.), ch. 1, § 30, p. 5.

STATUTORY NOTES

Prior Laws.

A former former § 7-1040 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1037.

The 2015 (1st E.S.) amendment, by ch. 1, substituted "that willfully" for "who willfully" near the beginning and "issued in" for "issued by" near the middle of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the

privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1040, enacted as § 7-1035 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1040 by Laws 1997, ch. 198, § 19, was redesignated as § 7-1043, pursuant to S.L. 2006, ch. 252, § 43.

Another former § 7-1040, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1045 by § 24 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1048 by S.L. 2006, ch. 252, § 48.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1041. Contest by obligor. — (1) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in sections 7-1043 through 7-1057, Idaho Code, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(2) The obligor shall give notice of the contest to: (a) A support enforcement agency providing services to the obligee; (b) Each employer that has directly received an income-withholding order relating to the obligor; and (c) The person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

History.

I.C., § 7-1038, as added by 1997, ch. 198, § 17, p. 556; am. and redesig. 2006, ch. 252, § 41, p. 764.

STATUTORY NOTES

Prior Laws.

A former § 7-1041 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1038; in subsection (1), inserted "by registering the order in a tribunal of this state and filing a contest to that order as provided in sections 7-1043 through 7-1057, Idaho Code, or otherwise contesting the order" and deleted the last sentence, which read: "Section 7-1043, Idaho Code applies to the contest"; in subsection (2)(b), inserted "relating to the obligor"; and, in subsection (2)(c), deleted "or agency" following the first occurrence of "person."

Compiler's Notes.

Former § 7-1041, enacted as § 7-1036 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1041 by Laws 1997, ch. 198, § 20, was redesignated as

§ 7-1044, pursuant to S.L. 2006, ch. 252, § 44.

Another former § 7-1041, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1046 by § 25 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1049 by S.L. 2006, ch. 252, § 49.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1042. Administrative enforcement of orders. — (1) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

History.

I.C., § 7-1034, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 18, p. 556; am. and redesig. 2006, ch. 252, § 42, p. 764; am. 2015 (1st E.S.), ch. 1, § 31, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1042 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1039 and inserted "or support enforcement agency" in subsection (1).

The 2015 (1st E.S.) amendment, by ch. 1, substituted "in another state or a foreign support order" for "by a tribunal of another state" near the middle of subsection (1).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of

its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1042, enacted as § 7-1037 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1042 by Laws 1997, ch. 198, § 21, was redesignated as § 7-1045, pursuant to S.L. 2006, ch. 252, § 45.

Another former § 7-1042, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1047 by § 26 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1050 by S.L. 2006, ch. 252, § 50.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1043. Registration of order for enforcement. — A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

History.

I.C., § 7-1035, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 19, p. 556; am. and redesig. 2006, ch. 252, § 43, p. 764; am. 2015 (1st E.S.), ch. 1, § 32, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1043 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1040.

The 2015 (1st E.S.), by ch. 1, amendment, substituted "in another state or a foreign support order" for "by a tribunal of another state" near the middle of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the

privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1043, enacted as § 7-1038 by Laws 1994, ch. 207, § 2 was redesignated as § 7-1043 by Laws 1997, ch. 198, § 21, was redesignated as § 7-1046, pursuant to S.L. 2006, ch. 252, § 46.

Another former § 7-1043, enacted by Laws 1994, ch. 207, § 2 was redesignated as § 7-1048 by Laws 1997, ch. 198, § 27, was subsequently redesignated as § 7-1051 by Laws 2006, ch. 252, § 51.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1044. Procedure to register order for enforcement. — (1) Except as otherwise provided in section 7-1064, Idaho Code, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the district court in this state:

(a) A letter of transmittal to the tribunal requesting registration and enforcement;

(b) Two copies, including one certified copy, of the order to be registered, including any modification of the order;

(c) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(d) The name of the obligor and, if known:

(i) The obligor's address and social security number;

(ii) The name and address of the obligor's employer and any other source of income of the obligor; and

(iii) A description and the location of property of the obligor in this state not exempt from execution; and

(e) Except as otherwise provided in section 7-1027, Idaho Code, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(4) If two or more orders are in effect, the person requesting registration shall:

(a) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(b) Specify the order alleged to be the controlling order, if any; and

(c) Specify the amount of consolidated arrears, if any.

(5) A request for determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

History.

I.C., § 7-1036, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 20, p. 556; am. and redesig. 2006, ch. 252, § 44, p. 764; am. 2007, ch. 320, § 2, p. 960; am. 2015 (1st E.S.), ch. 1, § 33, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1044 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1041; in the introductory paragraph in subsection (1), substituted "records" for "documents"; in subsection (1)(d)(i), deleted "and social security number" from the end; in subsection (1)(e), added the exception at the beginning, and deleted "agency or" preceding "person"; in subsection (3), inserted "other"; and added subsections (4) and (5).

The 2007 amendment, by ch. 320, added "and social security number" in subsection (1)(d)(i).

The 2015 (1st E.S.) amendment, by ch. 1, rewrote the introductory paragraph in subsection (1), which formerly read: "A support order or income-withholding order of another state may be registered in this state by sending the following records and information to the district court in this

state" and substituted "an order of a tribunal of another state or a foreign support order" for "a foreign judgment" near the middle of subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1044, enacted as § 7-1039 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1044 by Laws 1997, ch. 198, § 23, was redesignated as § 7-1047, pursuant to S.L. 2006, ch. 252, § 47.

Another former § 7-1045, enacted by Laws 1994, ch. 207, § 2 and redesignated as § 7-1050 by Laws 1997, ch. 198, § 29, was subsequently redesignated as § 7-1053 by Laws 2006, ch. 252, § 53.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1045. Effect of registration for enforcement. — (1) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(2) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in this chapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

History.

I.C., § 7-1037, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 21, p. 556; am. and redesig. 2006, ch. 252, § 45, p. 764; am. 2015 (1st E.S.), ch. 1, § 34, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1045 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1042 and updated the section references in subsection (3).

The 2015 (1st E.S.) amendment, by ch. 1, inserted "or a foreign support order" near the middle of subsection (1); inserted "support" following "registered" in subsections (2) and (3); inserted "or a foreign country" near the middle of subsection (2); and substituted "this chapter" for "sections 7-1043 through 7-1057, Idaho Code" near the beginning of subsection (3).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement

responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1045, enacted as § 7-1040 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1045 by Laws 1997, ch. 198, § 24, was redesignated as § 7-1048, pursuant to S.L. 2006, ch. 252, § 48.

Another former § 7-1045, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1050 by Laws 1997, ch. 198, § 29 and was subsequently redesignated as § 7-1053 by Laws 2006, ch. 252, § 53.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

Idaho Code § 7-1046

§ 7-1046. Choice of law. — (1) Except as otherwise provided in subsection (4) of this section, the law of the issuing state or foreign country governs:

(a) The nature, extent, amount, and duration of current payments under a registered support order;

(b) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(c) The existence and satisfaction of other obligations under the support order.

(2) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

(3) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(4) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

History.

I.C., § 7-1038, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 22, p. 556; am. and redesig. 2006, ch. 252, § 46, p. 764; am. 2015 (1st E.S.), ch. 1, § 35, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1046 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1043; rewrote subsections (1) and (2), which formerly read: "(1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

"(2) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies";

and added subsections (3) and (4).

The 2015 (1st E.S.) amendment, by ch. 1, inserted "foreign country" in the introductory paragraph of subsection (1), and subsections (2), (3), and (4).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor

proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1046, enacted as § 7-1041 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1046 by Laws 1997, ch. 198, § 25, was redesignated as § 7-1049, pursuant to S.L. 2006, ch. 252, § 49.

Another former § 7-1046, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1051 by § 30 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1054 by S.L. 2006, ch. 252, § 54.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1047. Notice of registration of order. — (1) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) A notice must inform the nonregistering party:

(a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is under section 7-1065, Idaho Code;

(c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(d) Of the amount of any alleged arrearages.

(3) If the registering party asserts that two or more orders are in effect, a notice must also:

(a) Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(b) Notify the nonregistering party of the right to a determination of which is the controlling order;

(c) State that the procedures provided in subsection (2) of this section apply to the determination of which is the controlling order; and

(d) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(4) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the

obligor's employer pursuant to the provisions of chapter 12, title 32, Idaho Code.

History.

I.C., § 7-1039, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 23, p. 556; am. and redesig. 2006, ch. 252, § 47, p. 764; am. 2015 (1st E.S.), ch. 1, § 36, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1047 was repealed. See Prior Laws, § 7-1021.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1044; in subsection (2)(b), deleted "the date of mailing or personal service of the" preceding "notice"; in subsection (2)(c), deleted "and precludes further contest of that order with respect to any matter that could have been asserted" from the end; added subsection (3), and redesignated former subsection (3) as (4), and updated the title reference therein.

The 2015 (1st E.S.) amendment, by ch. 1, in subsection (1), inserted "or a foreign support order" and "of this state" in the first sentence; in paragraph (b) of subsection (2), added "unless the registered order is under section 7-1065, Idaho Code"; in paragraph (a) of subsection (3), substituted "party" for "person" near the middle; and inserted "the support enforcement agency or" near the middle of subsection (4).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health

and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1047, enacted as § 7-1042 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1047 by Laws 1997, ch. 198, § 26, was redesignated as § 7-1050, pursuant to S.L. 2006, ch. 252, § 50.

Another former § 7-1047, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1054 by Laws 1997, ch. 198, § 33 and was subsequently redesignated as § 7-1058 by Laws 2006, ch. 252, § 58.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1048. Procedure to contest validity or enforcement of registered support order. — (1) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by section 7-1047, Idaho Code. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 7-1049, Idaho Code.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the support registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

History.

I.C., § 7-1040, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 24, p. 556; am. and redesig. 2006, ch. 252, § 48, p. 764; am. 2015 (1st E.S.), ch. 1, § 37, p. 5.

STATUTORY NOTES

Prior Laws.

Chapter 135 of S.L. 1959, formerly compiled as §§ 7-1048 — 7-1084, was repealed by S.L. 1969, ch. 130, § 44 and another act substituted using the same section numbers.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1045 and, in subsection (1), deleted “the date of mailing or personal service of” preceding “notice,” and updated the section reference.

The 2015 (1st E.S.) amendment, by ch. 1, inserted "support" following "registered" in the section heading, near the beginning of subsection (1), and near the middle of subsections (2) and (3); and substituted "the time required by section 7-1047, Idaho Code" for "twenty (20) days after notice of the registration" at the end of the first sentence in subsection (1).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1048, enacted as § 7-1043 Laws 1994, ch. 207, § 2 and redesignated as § 7-1048 by Laws 1997, ch. 198, § 27, was redesignated as § 7-1051, pursuant to S.L. 2006, ch. 252, § 51.

Another former § 7-1048, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1055 by Laws 1997, ch. 197, § 34 and was subsequently redesignated as § 7-1059 by Laws 2006, ch. 252, § 59.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1049. Contest of registration or enforcement. — (1) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) The issuing tribunal lacked personal jurisdiction over the contesting party; (b) The order was obtained by fraud;

(c) The order has been vacated, suspended, or modified by a later order; (d) The issuing tribunal has stayed the order pending appeal; (e) There is a defense under the law of this state to the remedy sought; (f) Full or partial payment has been made;

(g) The statute of limitation under section 7-1046, Idaho Code, precludes enforcement of some or all of the alleged arrearages; or (h) The alleged controlling order is not the controlling order.

(2) If a party presents evidence establishing a full or partial defense under subsection (1) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

History.

I.C., § 7-1041, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 25, p. 556; am. and redesig. 2006, ch. 252, § 49, p. 764; am. 2015 (1st E.S.), ch. 1, § 38, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1049 was repealed. See Prior Laws, § 7-1048.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1046; in subsection (1)(g), updated the section reference and inserted "alleged"; and added subsection (1)(h).

The 2015 (1st E.S.) amendment, by ch. 1, inserted "support" following "registered" in the introductory paragraph of subsection (1) and in subsection (2); and substituted "a registered support order" for "the order" in the first sentence in subsection (2) and near the end of subsection (3).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that

such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1049, enacted by Laws 1994, ch. 207, § 2 and redesignated as § 7-1049 by Laws 1997, ch. 198, § 28, was redesignated as § 7-1052, pursuant to S.L. 2006, ch. 252, § 52.

Another former § 7-1049, enacted by Laws 1994, ch. 207, § 2 and redesignated as § 7-1056 by Laws 1997, ch. 198, § 35, was subsequently redesignated as § 7-1060 by Laws 2006, ch. 252, § 60.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1050. Confirmed order. — Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History.

I.C., § 7-1042, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 26, p. 556; am. and redesig. 2006, ch. 252, § 50, p. 764; am. 2015 (1st E.S.), ch. 1, § 39, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1050 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1050, which comprised 1969, ch. 130, § 3, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1047.

The 2015 (1st E.S.) amendment, by ch. 1, inserted “support” following “registered” near the beginning of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: “Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop

and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1050, enacted as § 7-1045 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1050 by Laws 1997, ch. 198, § 30, was redesignated as § 7-1053, pursuant to S.L. 2006, ch. 252, § 53.

Another former § 7-1050, as enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1057 by § 36 of S.L. 1997, ch. 198 and was redesignated as § 7-1061 by S.L. 2006, ch. 252, § 61.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1051. Procedure to register child-support order of another state for modification. — A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another state shall register that order in this state in the same manner provided in sections 7-1043 through 7-1050, Idaho Code, if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

History.

I.C., § 7-1043, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 27, p. 556; am. and redesig. 2006, ch. 252, § 51, p. 764; am. 2015 (1st E.S.), ch. 1, § 40, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1051, which comprised 1969, ch. 130, § 4, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Another former § 7-1051 was repealed. See Prior Laws, § 7-1048.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1048, and substituted "that order in this state" for "the order in this state," and updated the section references.

The 2015 (1st E.S.) amendment, by ch. 1, updated the section reference in the first sentence.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and

others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1051, enacted as § 7-1046 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1051 by Laws 1997, ch. 198, § 30, was redesignated as § 7-1054, pursuant to S.L. 2006, ch. 252, § 54.

Another former § 7-1051, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1058 by § 37 of S.L. 1997, ch. 198 and was redesignated as § 7-1001 by S.L. 2006, ch. 252, § 1.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or

circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1052. Effect of registration for modification. — A tribunal of this state may enforce a child-support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of section 7-1053 or 7-1055, Idaho Code, have been met.

History.

I.C., § 7-1044, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 28, p. 556; am. and redesig. 2006, ch. 252, § 52, p. 764; am. 2015 (1st E.S.), ch. 1, § 41, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1052 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1052, which comprised 1969, ch. 130, § 5, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1049, updated the first section reference, and inserted "7-1055 or 7-1057."

The 2015 (1st E.S.) amendment, by ch. 1, inserted "support" following "registered" and substituted "section 7-1053 or 7-1055, Idaho Code" for "section 7-1053, 7-1055, or 7-1057, Idaho Code" near the end of the section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on

which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1052, enacted by Laws 1997, ch. 198, § 31, was redesignated as § 7-1055, pursuant to S.L. 2006, ch. 252, § 55.

Another former § 7-1052, enacted by Laws 1994, ch. 207, § 2, was amended and redesignated as § 7-1059 by § 38 of S.L. 1997, ch. 198 and was subsequently redesignated as § 7-1062 by S.L. 2006, ch. 252, § 62.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1053. Modification of child-support order of another state. — (1) If section 7-1055, Idaho Code, does not apply, upon petition a tribunal of this state may modify a child-support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(a) The following requirements are met:

(i) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(ii) A petitioner who is a nonresident of this state seeks modification; and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) This state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(2) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under section 7-1011, Idaho Code, establishes the aspects of the support order which are nonmodifiable.

(4) In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(5) On the issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

(6) Notwithstanding subsections (1) through (5) of this section and section 7-1005(1)(b), Idaho Code, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(a) One party resides in another state; and

(b) The other party resides outside the United States.

History.

I.C., § 7-1045, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 29, p. 556; am. and redesig. 2006, ch. 252, § 53, p. 764; am. 2015 (1st E.S.), ch. 1, § 42, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1053 which comprised 1969, ch. 130, § 6, p. 397 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Another former § 7-1053 was repealed. See Prior Laws, § 7-1048.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1050 and rewrote the section to the extent that a detailed comparison is impracticable.

The 2015 (1st E.S.) amendment, by ch. 1, deleted "except as otherwise provided in section 7-1057, Idaho Code" following "does not apply" near the beginning of the introductory paragraph in subsection (1) and at the beginning of subsection (3); and added subsection (6).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be

they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1053, enacted by Laws 1997, ch. 198, § 32, was redesignated as § 7-1056, pursuant to S.L. 2006, ch. 252, § 56.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1054. Recognition of order modified in another state. — If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the uniform interstate family support act, a tribunal of this state:

(1) May enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

History.

I.C., § 7-1046, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 30, p. 556; am. and redesig. 2006, ch. 252, § 54, p. 764.

STATUTORY NOTES

Prior Laws.

A former § 7-1054 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1054 which comprised 1969, ch. 130, § 7, p. 397 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1051; in the introductory paragraph, substituted "the uniform interstate family support act" for "this chapter or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter"; deleted former subsection (2), which read: "Enforce only nonmodifiable aspects of that order" and redesignated the following subsections accordingly; in present subsection (2), added "May"; and in present subsection (3), added "Shall."

Compiler's Notes.

Former § 7-1054, enacted as § 7-1047 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1054 by Laws 1997, ch. 198, § 33, was redesignated as § 7-1058, pursuant to S.L. 2006, ch. 252, § 58.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1055. Jurisdiction to modify support order of another state when individual parties reside in this state. — (1) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child-support order in a proceeding to register that order.

(2) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 7-1001 through 7-1015 and sections 7-1043 through 7-1057, Idaho Code, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 7-1016 through 7-1042, Idaho Code, and sections 7-1072 and 7-1073, Idaho Code, do not apply.

History.

I.C., § 7-1052, as added by 1997, ch. 198, § 31, p. 556; am. and redesig. 2006, ch. 252, § 55, p. 764; am. 2015 (1st E.S.), ch. 1, § 43, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1055 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1055 which comprised 1969, ch. 130, § 8, p. 397 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1052; in subsection (1), substituted "parties who are individuals" for "individual parties"; and rewrote subsection (2), which read: "A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of sections 7-1001 through 7-1012, Idaho Code, and this section to the enforcement or modification proceeding. Sections 7-1013 through 7-1039, Idaho Code, and sections 7-1054 through 7-1056, Idaho Code, do not apply and the tribunal shall apply the procedural and substantive law of this state."

The 2015 (1st E.S.) amendment, by ch. 1, substituted "7-1072 and 7-1073, Idaho Code" for "7-1058 through 7-1060, Idaho Code" near the end of subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1055, enacted as § 7-1048 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1055 by Laws 1997, ch. 198, § 34, was redesignated as § 7-1059, pursuant to S.L. 2006, ch. 252, § 59.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1056. Notice to issuing tribunal of modification. — Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

History.

I.C., § 7-1053, as added by 1997, ch. 198, § 32, p. 556; am. and redesig. 2006, ch. 252, § 56, p. 764.

STATUTORY NOTES

Prior Laws.

A former § 7-1056 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1056 which comprised 1969, ch. 130, § 9, p. 397; am. 1986, ch. 144, § 2, p. 401; am. 1986, ch. 221, § 7, p. 584 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1053 and divided and rewrote the former last sentence, which read: "Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction."

Compiler's Notes.

Former § 7-1056, enacted as § 7-1049 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1056 by Laws 1977, ch. 198, § 35, was redesignated as § 7-1060, pursuant to S.L. 2006, ch. 252, § 60.

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

§ 7-1057. Jurisdiction to modify child-support order of foreign country. — (1) Except as otherwise provided in section 7-1069, Idaho Code, if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child-support order otherwise required of the individual pursuant to section 7-1053, Idaho Code, has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(2) An order issued by a tribunal of this state modifying a foreign child-support order pursuant to this section is the controlling order.

History.

I.C., § 7-1057, as added by 2006, ch. 252, § 57, p. 764; am. 2015 (1st E.S.), ch. 1, § 44, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1057 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1057 which comprised 1969, ch. 130, § 10, p. 397 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2015 (1st E.S.) amendment, by ch. 1, deleted "or political subdivision" from the end of the section heading; in subsection (1), substituted "Except as otherwise provided in section 7-1069, Idaho code, if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order" for "If a foreign country or political subdivision that is a state will not of may not modify its order" at the beginning and deleted "or political subdivision" at the end; and inserted "by a tribunal of this state modifying a foreign child-support order" in subsection (2).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1057, enacted as § 7-1050 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1057 by Laws 1997, ch. 198, § 36, was redesignated as § 7-1061, pursuant to S.L. 2006, ch. 252, § 61.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1058. Procedure to register child-support order of foreign country for modification. — A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child-support order not under the convention may register that order in this state under sections 7-1043 through 7-1050, Idaho Code, if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

History.

I.C., § 7-1058, as added by 2015 (1st E.S.), ch. 1, § 46, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1058 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1058 which comprised 1969, ch. 130, § 11, p. 397 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Former § 7-1058, Proceeding to determine parentage, which comprised I.C., § 7-1047, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 33, p. 556; am. and redesig. 2006, ch. 252, § 58, p. 764, was repealed by S.L. 2015 (1st E.S.), ch. 1, § 45, effective May 19, 2015.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop

and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1058, enacted as § 7-1051 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1058 by Laws 1997, ch. 198, § 37, was redesignated as § 7-1001, pursuant to S.L. 2006, ch. 252, § 1.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1059. Definitions. — As used in sections 7-1059 through 7-1071, Idaho Code:

(1) "Application" means a request under the convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) "Central authority" means the entity designated by the United States or a foreign country described in section 7-1002(5)(d), Idaho Code, to perform the functions specified in the convention.

(3) "Convention support order" means a support order of a tribunal of a foreign country described in section 7-1002(5)(d), Idaho Code.

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor or child residing outside the United States.

(5) "Foreign central authority" means the entity designated by a foreign country described in section 7-1002(5)(d), Idaho Code, to perform the functions specified in the convention.

(6) "Foreign support agreement" means:

(a) An agreement for support in a record that:

(i) Is enforceable as a support order in the country of origin;

(ii) Has been:

1. Formally drawn up or registered as an authentic instrument by a foreign tribunal; or

2. Authenticated by, or concluded, registered or filed with a foreign tribunal; and

(iii) May be reviewed and modified by a foreign tribunal; and

(b) Includes a maintenance arrangement or authentic instrument under the convention.

(7) "United States central authority" means the Secretary of the United States Department of Health and Human Services.

History.

I.C., § 7-1059, as added by 2015 (1st E.S.), ch. 1, § 47, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1059 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1059 which comprised 1969, ch. 130, § 12, p. 397; am. 1977, ch. 94, § 3, p. 194; am. 1986, ch. 144, § 3, p. 401; am. 1986, ch. 221, § 8, p. 584 was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the

2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1059, enacted as § 7-1052 by Laws 1994, ch. 207, § 2 and redesignated as § 7-1059 by Laws 1997, ch. 198, § 38, was redesignated as § 7-1062, pursuant to S.L. 2006, ch. 252, § 62. That section was again redesignated by S.L. 2015 (1st E.S.), ch. 1, § 64, as § 7-1076.

Former § 7-1059 was amended and redesignated as § 7-1072, pursuant to S.L. 2015 (1st E.S.), ch. 1, § 60, effective May 19, 2015.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1060. Applicability. — Sections 7-1059 through 7-1071, Idaho Code, apply only to a support proceeding under the convention. In such a proceeding, if a provision of sections 7-1059 through 7-1071, Idaho Code, is inconsistent with sections 7-1001 through 7-1058, Idaho Code, sections 7-1059 through 7-1071, Idaho Code, control.

History.

I.C., § 7-1060, as added by 2015 (1st E.S.), ch. 1, § 48, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1060 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1060, which comprised 1969, ch. 130, § 13, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that

nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1060 was amended and redesignated as § 7-1073, pursuant to S.L. 2015 (1st E.S.), ch. 1, § 61, effective May 19, 2015.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1061. Relationship of department of health and welfare to United States central authority. — The Idaho department of health and welfare is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

History.

I.C., § 7-1061, as added by 2015 (1st E.S.), ch. 1, § 49, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1061 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1061, which comprised 1969, ch. 130, § 14, p. 397; am. 1986, ch. 144, § 4, p. 401, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that

nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1061 was amended and redesignated as § 7-1074, pursuant to S.L. 2015 (1st E.S.), ch. 1, § 62, effective May 19, 2015.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1062. Initiation by department of health and welfare of support proceeding under convention. — (1) In a support proceeding under sections 7-1059 through 7-1071, Idaho Code, the department of health and welfare shall:

(a) Transmit and receive applications; and

(b) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(2) The following support proceedings are available to an obligee under the convention:

(a) Recognition or recognition and enforcement of a foreign support order;

(b) Enforcement of a support order issued or recognized in this state;

(c) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(d) Establishment of a support order if recognition of a foreign support order is refused under section 7-1066(2)(b), (d) or (i), Idaho Code;

(e) Modification of a support order of a tribunal of this state; and

(f) Modification of a support order of a tribunal of another state or a foreign country.

(3) The following support proceedings are available under the convention to an obligor against which there is an existing support order:

(a) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(b) Modification of a support order of a tribunal of this state; and

(c) Modification of a support order of a tribunal of another state or a foreign country.

(4) A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

History.

I.C., § 7-1062, as added by 2015 (1st E.S.), ch. 1, § 50, p. 5.

STATUTORY NOTES

Prior Laws.

A former § 7-1062 was repealed. See Prior Laws, § 7-1048.

Another former § 7-1062, which comprised 1969, ch. 130, § 15, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such

proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Former § 7-1062 was redesignated as § 7-1076, pursuant to S.L. 2015 (1st E.S.), ch. 1, § 64, effective May 19, 2015.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1063. Direct request. — (1) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(2) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, sections 7-1064 through 7-1071, Idaho Code, apply.

(3) In a direct request for recognition and enforcement of a convention support order or foreign support agreement:

(a) A security, bond or deposit is not required to guarantee the payment of costs and expenses; and

(b) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(4) A petitioner filing a direct request is not entitled to assistance from the department of health and welfare.

(5) Sections 7-1059 through 7-1071, Idaho Code, do not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

History.

I.C., § 7-1063, as added by 2015 (1st E.S.), ch. 1, § 51, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1063, which comprised 1969, ch. 130, § 16, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1064. Registration of convention support order. — (1) Except as otherwise provided in sections 7-1059 through 7-1071, Idaho Code, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in sections 7-1043 through 7-1058, Idaho Code.

(2) Notwithstanding sections 7-1026 and 7-1044(1), Idaho Code, a request for registration of a convention support order must be accompanied by:

(a) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by The Hague conference on private international law;

(b) A record stating that the support order is enforceable in the issuing country;

(c) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(d) A record showing the amount of arrears, if any, and the date the amount was calculated;

(e) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(f) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(3) A request for registration of a convention support order may seek recognition and partial enforcement of the order.

(4) A tribunal of this state may vacate the registration of a convention support order without the filing of a contest under section 7-1065, Idaho

Code, only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(5) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

History.

I.C., § 7-1064, as added by 2015 (1st E.S.), ch. 1, § 52, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1064, which comprised 1969, ch. 130, § 17, p. 397; am. 1986, ch. 144, § 5, p. 401, was repealed by S.L. 994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1065. Contest of registered convention support order. — (1) Except as otherwise provided in sections 7-1059 through 7-1071, Idaho Code, sections 7-1047 through 7-1050, Idaho Code, apply to a contest of a registered convention support order.

(2) A party contesting a registered convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(3) If the nonregistering party fails to contest the registered convention support order by the time specified in subsection (2) of this section, the order is enforceable.

(4) A contest of a registered convention support order may be based only on grounds set forth in section 7-1066, Idaho Code. The contesting party bears the burden of proof.

(5) In a contest of a registered convention support order, a tribunal of this state:

(a) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(b) May not review the merits of the order.

(6) A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

(7) A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

History.

I.C., § 7-1065, as added by 2015 (1st E.S.), ch. 1, § 53, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1065, which comprised 1969, ch. 130, § 18, p. 397; am. 1977, ch. 94, § 4, p. 194; am. 1986, ch. 144, § 6, p. 401, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1066. Recognition and enforcement of registered convention support order. — (1) Except as otherwise provided in subsection (2) of this section, a tribunal of this state shall recognize and enforce a registered convention support order.

(2) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(a) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(b) The issuing tribunal lacked personal jurisdiction consistent with section 7-1005, Idaho Code;

(c) The order is not enforceable in the issuing country;

(d) The order was obtained by fraud in connection with a matter of procedure;

(e) A record transmitted in accordance with section 7-1064, Idaho Code, lacks authenticity or integrity;

(f) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(g) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this chapter in this state;

(h) Payment, to the extent alleged arrears have been paid in whole or in part;

(i) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(i) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(ii) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(j) The order was made in violation of section 7-1069, Idaho Code.

(3) If a tribunal of this state does not recognize a convention support order under subsection (2)(b), (d), or (i) of this section:

(a) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

(b) The department of health and welfare shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received under section 7-1062, Idaho Code.

History.

I.C., § 7-1066, as added by 2015 (1st E.S.), ch. 1, § 54, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1066, which comprised 1969, ch. 130, § 19, p. 397; am. 1977, ch. 94, § 5, p. 194; am. 1986, ch. 144, § 7, p. 401, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on

which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1067. Partial enforcement. — If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

History.

I.C., § 7-1067, as added by 2015 (1st E.S.), ch. 1, § 55, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1067, which comprised 1969, ch. 130, § 20, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1068. Foreign support agreement. — (1) Except as otherwise provided in subsections (3) and (4) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(2) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(a) A complete text of the foreign support agreement; and

(b) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(3) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(4) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(a) Recognition and enforcement of the agreement is manifestly incompatible with public policy;

(b) The agreement was obtained by fraud or falsification;

(c) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this state; or

(d) The record submitted under subsection (2) of this section lacks authenticity or integrity.

(5) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

History.

I.C., § 7-1068, as added by 2015 (1st E.S.), ch. 1, § 56, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1068, which comprised 1969, ch. 130, § 21, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made

to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1069. Modification of convention child-support order. — (1) A tribunal of this state may not modify a convention child-support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(a) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(b) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(2) If a tribunal of this state does not modify a convention child-support order because the order is not recognized in this state, section 7-1066(3), Idaho Code, applies.

History.

I.C., § 7-1069, as added by 2015 (1st E.S.), ch. 1, § 57, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1069, which comprised 1969, ch. 130, § 22, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop

and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1070. Personal information — Limit on use. — Personal information gathered or transmitted under this chapter may be used only for the purposes for which it was gathered or transmitted.

History.

I.C., § 7-1070, as added by 2015 (1st E.S.), ch. 1, § 58, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1070, which comprised 1969, ch. 130, § 23, p. 397; am. 1977, ch. 94, § 6, p. 194, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1071. Record in original language — English translation. — A record filed with a tribunal of this state under sections 7-1059 through 7-1071, Idaho Code, must be in the original language and, if not in English, must be accompanied by an English translation.

History.

I.C., § 7-1071, as added by 2015 (1st E.S.), ch. 1, § 59, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1071, which comprised 1969, ch. 130, § 24, p. 397; am. 1977, ch. 94, § 7, p. 194; am. 1986, ch. 144, § 8, p. 401; am. 1986, ch. 221, § 9, p. 584; am. 1986, ch. 222, § 7, p. 593, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that

already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1072. Grounds for rendition. — (1) For purposes of sections 7-1072 and 7-1073, Idaho Code, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) On the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

History.

I.C., § 7-1048, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 34, p. 556; am. and redesig. 2006, ch. 252, § 59, p. 764; am. and redesig. 2015 (1st E.S.), ch. 1, § 60, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1072, which comprised 1969, ch. 130, § 25, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2015 (1st E.S.) amendment, by ch. 1, redesignated former § 7-1059 as this section and substituted "sections 7-1072 and 7-1073, Idaho Code" for "sections 7-1059 and 7-1060, Idaho Code" near the beginning of subsection (1).

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1055; updated the section references in subsection (1); and, in subsection (2)(b), substituted "demand of the governor" for "demand by the governor."

Compiler's Notes.

This section was formerly compiled as § 7-1059.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1073. Conditions of rendition. — (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

History.

I.C., § 7-1049, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 35, p. 556; am. and redesig. 2006, ch. 252, § 60, p. 764; am. and redesig. 2015 (1st E.S.), ch. 1, § 61, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1073, which comprised 1969, ch. 130, § 25, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1056 and deleted "the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act" preceding "the governor of another state" in subsection (2).

The 2015 (1st E.S.) amendment, by ch. 1, redesignated former § 7-1060 as this section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made

to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

This section was formerly compiled as § 7-1060.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1074. Uniformity of application and construction. — In applying and construing this uniform act consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

I.C., § 7-1050, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 36, p. 556; am. and redesig. 2006, ch. 252, § 61, p. 764; am. and redesig. 2015 (1st E.S.), ch. 1, § 62, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1074, which comprised 1969, ch. 130, § 25, p. 397, am. 1978, ch. 149, § 1, p. 331, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1057 and rewrote the section which formerly read: "This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it."

The 2015 (1st E.S.) amendment, by ch. 1, redesignated former § 7-1061 as this section and substituted "this uniform act" for "this chapter".

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the

important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

This section was formerly compiled as § 7-1061.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1075. Transitional provision. — This chapter applies to proceedings begun on or after July 1, 2015, to establish a support order or determine parentage of a child or to register, recognize, enforce or modify a prior support order, determination or agreement, whenever issued or entered.

History.

I.C., § 7-1075, as added by 2015 (1st E.S.), ch. 1, § 63, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1075, which comprised 1969, ch. 130, § 28, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1076. Severability. — If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.

I.C., § 7-1052, as added by 1994, ch. 207, § 2, p. 639; am. and redesig. 1997, ch. 198, § 38, p. 556; am. and redesig. 2006, ch. 252, § 62, p. 764; am. and redesig. 2015 (1st E.S.), ch. 1, § 64, p. 5.

STATUTORY NOTES

Prior Laws.

Former § 7-1076, which comprised 1969, ch. 130, § 29, p. 397, was repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

Amendments.

The 2006 amendment, by ch. 252, renumbered this section from § 7-1059.

The 2015 (1st E.S.) amendment, by ch. 1, redesignated former § 7-1062 as this section.

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act [§ 56-1003], develop

and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

This section was formerly compiled as § 7-1062.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 63 of S.L. 2006, ch. 252 provided that the act should take effect on and after July 1, 2007.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

§ 7-1077 — 7-1081. Reciprocal enforcement of support, duties — Conditions of interstate rendition. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 7-1063 to 7-1081 were repealed by S.L. 1969, ch. 130, § 44.

Compiler's Notes.

The following sections were repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994.

§ 7-1077, which comprised 1969, ch. 130, § 30, p. 397.

§ 7-1078, which comprised 1969, ch. 130, § 31, p. 397.

§ 7-1079, which comprised 1969, ch. 130, § 32, p. 397.

§ 7-1080, which comprised 1969, ch. 130, § 33, p. 397; am. 1977, ch. 94, § 8, p. 194.

§ 7-1081, which comprised 1969, ch. 130, § 34, p. 397; am. 1977, ch. 94, § 9, p. 194.

§ 7-1082 — 7-1087. Foreign support orders — Remedies of obligee — Registry of foreign support orders — Representation by state — Treatment of foreign order. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 7-1082 to 7-1084 were repealed by S.L. 1961, ch. 136, § 44.

Compiler's Notes.

These sections, which comprised S.L. 1969, ch. 130, §§ 35 to 40, p. 397, were repealed by S.L. 1977, ch. 94, § 10.

§ 7-1088, 7-1089. Construction of act — Short title. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1994, ch. 207, § 1, effective July 1, 1994: § 7-1088, which comprised 1969, ch. 130, § 41, p. 397.

§ 7-1089, which comprised 1969, ch. 130, § 42, p. 397.

Chapter 11
PROCEEDINGS TO ESTABLISH PATERNITY

Sec.

7-1101. Title of act.

7-1102. Jurisdiction of district court.

7-1103. Definitions.

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7-1120. Order of filiation.

7-1121. Order for support — Continuance beyond age of 18 — Other payments by father.

7-1122. Payment to mother or trustee — Report to court.
7-1123. Change of trustee.
7-1124. Full faith and credit.
7-1125. No right to jury trial.
7-1126. Custody of children — Best interest.

§ 7-1101. Title of act. — This act shall be known as the Paternity Act.

History.

1969, ch. 93, § 25, p. 318.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1969, ch. 93, which is compiled as §§ 7-1101 to 7-1106, 7-1108 to 7-1114, and 7-1117 to 7-1123. Probably, the reference should be to "this chapter," being chapter 11, title 7, Idaho Code.

CASE NOTES

Application of § 16-1513.

Evidence on physical similarities.

Issue of chastity.

Application of § 16-1513.

This chapter and § 16-1513 are mutually exclusive and the provisions of § 16-1513 do not apply to paternity actions brought pursuant to this chapter. Burch v. Hearn, 116 Idaho 956, 782 P.2d 1238 (1989).

Subsection (3) [(now (4)] of § 16-1513 was never intended to prevent a father from voluntarily coming forward and, in the absence of an adoption or termination proceeding, filing an action under this chapter to establish his rights and obligations with regard to the child without first having filed and registered the notice of claim to paternity required by subsection (3) [(now (4)] of § 16-1513. Burch v. Hearn, 116 Idaho 956, 782 P.2d 1238 (1989).

Evidence on Physical Similarities.

In a paternity suit where the child was only 15 months old, testimony of the mother concerning physical similarities between the putative father and the child was insufficient in itself to establish paternity; but since the matter was tried to the court, the admission into evidence of the child for purposes

of comparison was not reversible error. Comish v. Smith, 97 Idaho 89, 540 P.2d 274 (1975).

Issue of Chastity.

In a paternity suit where defendant failed to establish any relevance between evidence concerning plaintiff's reputation for sexual availability and the issue of access during the time period when conception was possible, the court correctly excluded defendant's evidence of plaintiff's prior lack of chastity. Comish v. Smith, 97 Idaho 89, 540 P.2d 274 (1975).

Cited In re Toelkes, 97 Idaho 406, 545 P.2d 1012 (1976); Isaacson v. Obendorf, 99 Idaho 304, 581 P.2d 350 (1978).

RESEARCH REFERENCES

ALR. — Statute of limitations in illegitimacy or bastardy proceedings. 59 A.L.R.3d 685.

Determination of paternity of child as within scope of proceeding under Uniform Reciprocal Enforcement of Support Act. 81 A.L.R.3d 1175.

Admissibility and weight of blood-grouping tests in disputed paternity cases. 43 A.L.R.4th 579.

Paternity proceedings: Right to jury trial. 51 A.L.R.4th 565.

§ 7-1102. Jurisdiction of district court. — The district courts shall have exclusive original jurisdiction in proceedings to establish paternity and, in any such proceeding in which it makes a finding of paternity, to order support and determine custody, as set forth in this act.

History.

1969, ch. 93, § 1, p. 318.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1969, ch. 93, which is compiled as §§ 7-1101 to 7-1106, 7-1108 to 7-1114, and 7-1117 to 7-1123. Probably, the reference should be to "this chapter," being chapter 11, title 7, Idaho Code.

§ 7-1103. Definitions. — When used in this act:

(1) The phrase "child conceived or born out of wedlock" refers to a child who is conceived outside of lawful matrimony but has not yet been born or who is begotten and born outside of lawful matrimony.

(2) The word "child" refers to child conceived or born out of wedlock.

(3) The word "mother" refers to the mother of a child conceived or born out of wedlock.

(4) The word "father" refers to the biological father of a child conceived or born out of wedlock.

(5) The word "court" refers to the district court which is hearing the cause.

History.

1969, ch. 93, § 2, p. 318; am. 1988, ch. 132, § 1, p. 235; am. 2019, ch. 295, § 1, p. 876.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 295, substituted "conceived or born" for "born" throughout the section; and inserted "conceived outside of lawful matrimony but has not yet been born or who is" in subsection (1).

Compiler's Notes.

The words "this act" refer to S.L. 1969, Chapter 93, which is compiled as §§ 7-1101 to 7-1106, 7-1108 to 7-1114, and 7-1117 to 7-1123. Probably, the reference should be to "this chapter," being chapter 11, title 7, Idaho Code.

CASE NOTES

Child Born Out of Wedlock.

This section, which defines "child born out of wedlock" as "a child who is begotten and born outside of lawful matrimony," refers to either a child born to an unmarried woman or a child born to a married woman but who was conceived by a man other than the mother's husband. This interpretation is consistent with the remaining sections contained in this chapter. Johnson v. Studley-Preston, 119 Idaho 1055, 812 P.2d 1216 (1991).

§ 7-1104. Order fixes legal relationships. — After an order of filiation has been made as herein provided, the legal status and legal relationships and the rights and obligations between a person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married.

History.

1969, ch. 93, § 3, p. 318.

STATUTORY NOTES

Cross References.

Order of filiation, § 7-1120.

§ 7-1105. Parents liable for support and education — Deceased parent — Liability of estate. — Each parent of a child conceived or born out of wedlock is liable for the necessary support and education of the child and for the child's funeral expenses. If a parent dies, an order of support or a judicially approved settlement made prior to that parent's death shall be enforceable as a claim against the deceased parent's estate in an amount to be determined by the probate court not greater than is provided in the order of settlement, having regard to the age of the child, the ability of the surviving parent to support and educate it, the amount of property left by the deceased parent, and the number, age and financial condition of those other persons legally entitled to support by the deceased parent during his or her lifetime.

History.

1969, ch. 93, § 4, p. 318; am. 2019, ch. 295, § 2, p. 876.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 295, substituted "conceived or born" for "born" in the first sentence.

§ 7-1106. Acknowledgment of paternity. — (1) A voluntary acknowledgment of paternity for an Idaho birth shall be admissible as evidence of paternity and shall constitute a legal finding of paternity upon the filing of a signed and notarized acknowledgment with the vital statistics unit of the department of health and welfare. If the mother was married at the time of either conception or birth, or between conception and birth, and the husband is not the father of the child, the husband may file an executed and notarized affidavit of nonpaternity if it is accompanied by a voluntary acknowledgment of paternity signed and notarized by the mother and the alleged father. Any party executing an acknowledgment of paternity or affidavit of nonpaternity may file a notarized rescission of such with the vital statistics unit within the earlier of:

(a) Sixty (60) days after the acknowledgment is filed; or (b) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

Such rescission shall be effective upon filing with the vital statistics unit. The vital statistics unit shall notify the other party or parties of the rescission by certified mail.

(2) After the period for rescission, an executed acknowledgment of paternity may be challenged only in court on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the party challenging the acknowledgment. The legal responsibilities, including the obligation to pay child support, of any party to the acknowledgment shall not be stayed except for good cause shown.

(3) The court may enter an order for the support of a child upon execution of a voluntary acknowledgment without further proceedings to establish paternity.

(4) The director shall prescribe forms for acknowledgment of paternity, affidavits of nonpaternity, and rescission thereof, and the board of health and welfare may promulgate such rules as are necessary to prescribe forms and establish fees to recover costs of maintaining such system.

History.

1969, ch. 93, § 5, p. 318; am. 1988, ch. 132, § 2, p. 235; am. 1994, ch. 237, § 1, p. 746; am. 1995, ch. 234, § 1, p. 791; am. 1996, ch. 49, § 1, p. 143; am. 1998, ch. 106, § 1, p. 362.

STATUTORY NOTES

Compiler's Notes.

The vital statistics unit of the department of health and welfare, referred to in this section, is the bureau of vital records and health statistics. See *http://www.healthand welfare.idaho.gov health vitalrecordsand healthstatistics/tabid/1504/default.aspx*.

CASE NOTES

Burden of proof.

Material mistake.

Paternity affidavit.

Timing of relief.

Burden of Proof.

A party seeking to rescind a voluntary acknowledgment of paternity affidavit (VAP) is not required to show that one of the parties executing the VAP did so as a result of fraud, duress, or material mistake; rather, the party seeking rescission must show that his or her acknowledgement of paternity was the product of fraud, duress, or material mistake of fact. Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015).

A party seeking relief under subsection (2) bears the burden of proving his or her claim by clear and convincing evidence. Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015).

Material Mistake.

Child's name was improperly changed and the name of the single parent's former paramour removed from the child's birth certificate, because the district court erred in interpreting the statutory words "material mistake of fact" to mean a "mutual mistake of fact." Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015).

Paternity Affidavit.

It was error to terminate a biological father's parental rights based on his failure to file and register his notice of commencement of paternity proceedings under § 16-1513, because the father and mother had filled out and had notarized a paternity affidavit requesting that he be listed as the father on the child's birth certificate; it was, therefore, unnecessary for him to file a paternity action, he was the biological father of the child and, pursuant to § 16-2007, he was entitled to have had notice of the termination hearing. Roe Family Servs. v. Doe (In re Baby Boy Doe), 139 Idaho 930, 88 P.3d 749 (2004).

Timing of Relief.

When a mother sought relief from a voluntary acknowledgement of paternity affidavit (VAP) over 60 days after the affidavit was signed, based on an alleged material mistake of fact, a reasonable person standard applied, because (1) a VAP is analogous to a judgment, as a VAP is a legal finding of paternity, and (2) a reasonable person standard ensures finality of the acknowledgment and provides stability for the child. Hamberlin v. Bradford, — Idaho —, 454 P.3d 589 (2019).

Cited Johnson v. Studley-Preston, 119 Idaho 1055, 812 P.2d 1216 (1991).

§ 7-1107. Limitation of action. — (1) Except as provided in section 16-1504(10), Idaho Code, a proceeding to establish paternity of the child under the provisions of this chapter may be instituted either before or after the birth of the child but must be instituted before the child reaches the age of majority as defined in section 32-101, Idaho Code.

(2) This section shall apply retroactively and is for the benefit of any dependent child, whether conceived or born before or after the effective date of this act and regardless of the past or current marital status of the parents.

History.

I.C., § 7-1107, as added by 1985, ch. 159, § 4, p. 417; am. 1986, ch. 221, § 1, p. 584; am. 2013, ch. 138, § 1, p. 323; am. 2019, ch. 295, § 3, p. 876; am. 2020, ch. 330, § 2, p. 952.

STATUTORY NOTES

Prior Laws.

Former § 7-1107, which comprised 1969, ch. 93, § 6, p. 318, was repealed by S.L. 1985, ch. 159, § 3.

Amendments.

The 2013 amendment, by ch. 138, added the subsection designations; and rewrote subsection (1), which formerly read: "Proceedings to establish paternity of the child may be instituted only after the birth of the child and must be instituted before the child reaches the age of majority as defined in section 32-101, Idaho Code."

The 2019 amendment, by ch. 295, substituted "conceived or born" for "born" in subsection (2).

The 2020 amendment, by ch. 330, substituted "section 16-1504(10), Idaho Code" for "section 16-1504(9), Idaho Code" near the beginning of subsection (1).

Compiler's Notes.

The phrase "the effective date of this act" in subsection (2) was added to this section by S.L. 1986, Chapter 221, which was effective July 1, 1986.

CASE NOTES

Case caption.

Statute of limitations.

Case Caption.

This section and § 56-203B do not require the state to actually place the child's name in the caption; the state can properly bring an action for reimbursement ex rel. the mother. State ex rel. Johnson v. Niederer, 123 Idaho 282, 846 P.2d 933 (Ct. App. 1992).

Statute of Limitations.

Paternity action against defendant determined to be father of child was not barred by the statute of limitations as the 1986 amendment to this section clearly expressed the legislature's intention that the statute of limitations not run on a cause of action for any child born before or after the effective date of the amendment. Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

Cited State, Dep't of Health & Welfare ex rel. Washington ex rel. Nicklaus v. Annen, 126 Idaho 691, 889 P.2d 720 (1995).

§ 7-1108. Death of mother — Proceedings continue. — If, after the action is commenced, the mother dies or is judicially determined an incompetent, the proceeding does not abate but may be continued by her executor, administrator, guardian, or such other personal representative as may be appointed by any court of competent jurisdiction.

History.

1969, ch. 93, § 7, p. 318.

§ 7-1109. Venue — Birth out of state no bar. — Proceedings to establish paternity may be originated in the county where the mother or child resides or is found or in the county where the putative father resides or is found. The fact that the child was born outside of the state of Idaho does not bar a proceeding to establish paternity in the county where the putative father resides or is found or in the county where the mother resides or the child is found.

History.

1969, ch. 93, § 8, p. 318.

Idaho Code § 7-1110

§ 7-1110. Proceedings — By whom brought. — Proceedings to establish the paternity of the child and to compel support under this act may be commenced by the mother, whether a minor or not, or by the child's guardian or other person standing in a paternal relation or being the next of kin of the child, or by the department of health and welfare on behalf of a child for whom services are being provided under Title IV-D of the social security act.

History.

1969, ch. 93, § 9, p. 318; am. 1978, ch. 151, § 1, p. 333; am. 1995, ch. 234, § 2, p. 791.

STATUTORY NOTES

Federal References.

Title IV-D of the Social Security Act, cited in this section, is codified as 42 USCS § 651 et seq.

Compiler's Notes.

The words "this act" refer to S.L. 1969, ch. 93, which is compiled as §§ 7-1101 to 7-1106, 7-1108 to 7-1114, and 7-1117 to 7-1123. Probably, the reference should be to "this chapter," being chapter 11, title 7, Idaho Code.

CASE NOTES

Intervention.

Putative father.

Statute of limitations.

Intervention.

The state may intervene, as a matter of right, in a paternity action against putative father by mother of child seeking paternity declaration and past and future child support payments. Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

Putative Father.

The express language of this section supports the conclusion that a putative father may bring a paternity action. Johnson v. Studley-Preston, 119 Idaho 1055, 812 P.2d 1216 (1991).

A putative father may bring a paternity action pursuant to this section, even if adoption of the child or termination of parental rights is not at issue. Johnson v. Studley-Preston, 119 Idaho 1055, 812 P.2d 1216 (1991).

Statute of Limitations.

Paternity action against defendant determined to be father of child was not barred by the statute of limitations as the 1986 amendment to § 7-1107 clearly expressed the legislature's intention that the statute of limitations not run on a cause of action for any child born before or after the effective date of the amendment. Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

Cited State Dep't of Health & Welfare ex rel. Gage v. Engelbert, 114 Idaho 89, 753 P.2d 825 (1988).

RESEARCH REFERENCES

ALR. — Right of illegitimate child to maintain action to determine paternity. 86 A.L.R.5th 637.

§ 7-1111. Commencement of proceedings. — (1) Proceedings are commenced by either the filing of a verified voluntary acknowledgment of parentage executed by both the mother and father of the child; or by the filing of a verified complaint, alleging that the person named as defendant is the father of the child and petitioning the court to issue a summons. The service of summons, the complaint, and all pleadings shall be in accordance with the Idaho rules of civil procedure.

(2) A voluntary acknowledgment of parentage may be executed by the mother, whether a minor or not, and the father, whether a minor or not, and regardless of the marital status of the mother or father. The acknowledgment shall be verified by both the mother and the father.

History.

1969, ch. 93, § 10, p. 318; am. 1988, ch. 132, § 3, p. 235.

§ 7-1112. Warrant for arrest — When issued. — The court may issue a warrant, directing the defendant be arrested and brought before the court, when a petition is presented to the court to commence the proceedings and it appears that:

(1) the summons cannot be served; or (2) the defendant has failed to obey the summons; or (3) the defendant is likely to leave the jurisdiction; or (4) a summons, in the court's opinion, would be ineffectual; or (5) the safety of the plaintiff is endangered; or (6) a defendant on bail or on parole has failed to appear.

History.

1969, ch. 93, § 11, p. 318.

§ 7-1113. Bond. — The court before whom the defendant is taken under the preceding section may require an undertaking to appear or in default thereof may place the defendant in custody.

History.

1969, ch. 93, § 12, p. 318.

Idaho Code § 7-1114

§ 7-1114. Trial by court — Testimony on access — Corroboration required. — The trial shall be by the court without a jury. If the mother is married both she and her husband may testify to nonaccess. If the defendant shall offer testimony of access by others at or about the time charged in the complaint, such testimony shall not be competent or sufficient to base a finding of access unless corroborated by other acts and circumstances tending to prove such access.

History.

1969, ch. 93, § 13, p. 318.

CASE NOTES

No Jury Trial.

Since a paternity suit is not a common law action, defendant was not unconstitutionally deprived of the right to a jury trial as it was within the legislature's province to provide for other methods of trial than by jury in such proceedings. Comish v. Smith, 97 Idaho 89, 540 P.2d 274 (1975).

§ 7-1115. Testimony and evidence relating to paternity. — Evidence relating to paternity, whether given at the trial or the pretrial hearing, may include, but is not limited to:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) The statistical probability of the alleged father's paternity based upon the genetic tests; or

(4) Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts; or

(5) A voluntary acknowledgment of paternity executed under section 7-1106, Idaho Code.

History.

I.C., § 7-1115, as added by 1982, ch. 127, § 2, p. 364; am. 1995, ch. 234, § 3, p. 791.

STATUTORY NOTES

Prior Laws.

Former § 7-1115, which comprised S.L. 1969, ch. 93, § 14, p. 318, was repealed by S.L. 1982, ch. 127, § 1.

CASE NOTES

Human Leucocyte Antigen Test.

In divorce action wherein paternity of child was questioned, the failure of the court to consider the human leucocyte antigen tests which indicated extremely high probability that husband was father of the child might very

well have changed the result and rejection of the HLA evidence was prejudicial. Crain v. Crain, 104 Idaho 666, 662 P.2d 538 (1983).

If the results of human leucocyte antigen tests are properly offered, such are admissible in evidence and should be considered, along with all other evidence, on the issue of paternity, regardless of whether the results exclude paternity. Crain v. Crain, 104 Idaho 666, 662 P.2d 538 (1983).

§ 7-1116. Genetic tests. — (1) The court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to genetic tests. The department of health and welfare may order or the individuals may voluntarily agree to such tests. The tests shall be performed by an expert qualified as an examiner of genetic markers. Verified documentation of the chain of custody of the genetic evidence is competent evidence to establish chain of custody. A verified expert's report prepared by a laboratory approved by the American association of blood banks or other accreditation body shall be admitted at trial unless a challenge to the testing procedures or the genetic analysis has been made twenty-one (21) days before trial. The genetic test report must be served upon the defendant party with the complaint or as soon as it is obtained, and in any event at least twenty-eight (28) days before a trial together with a notice that the genetic test will be admitted unless a challenge to the testing procedures or the genetic analysis has been made by a party at least twenty-one (21) days before trial. A genetic test result with a probability of paternity of at least ninety-eight percent (98%) shall create a rebuttable presumption of paternity.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers present on blood cells and components. Additional tests performed by other experts of the same qualifications may be ordered by the court at the expense of the party requesting additional testing.

(3) In all cases, the court shall determine the number and qualifications of the experts.

(4) The requesting party shall pay the expense of genetic testing; however, the cost of genetic testing shall be recovered by the prevailing party in the action.

(5) Whenever the results of the tests exclude any male witness from possible paternity, the tests shall be conclusive evidence of nonpaternity of the male witness. The refusal of any party to submit to the genetic tests shall be disclosed to the court and is subject to the sanctions within the

jurisdiction of the court. If the action was brought by the child's mother, but she refuses to submit herself or the child to genetic tests, the action shall be dismissed.

(6) Any party calling a male witness for the purpose of testifying that he had sexual intercourse with the mother at any possible time of conception shall provide all other parties with the name and address of the witness twenty (20) days before the trial or pretrial hearing. If a male witness is produced at the hearing for the purpose stated in this subsection, but the party calling the witness failed to provide the twenty (20) day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness prior to hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

(7) Any individual may object to such an order of the department of health and welfare by filing an objection with the court.

History.

I.C., § 7-1116, as added by 1982, ch. 127, § 3, p. 364; am. 1994, ch. 237, § 2, p. 746; am. 1995, ch. 234, § 4, p. 791; am. 1996, ch. 49, § 2, p. 143; am. 1997, ch. 195, § 1, p. 552.

STATUTORY NOTES

Prior Laws.

Former § 7-1116 which comprised S.L. 1969, ch. 93, § 15, p. 318, was repealed by S.L. 1982, ch. 127, § 1.

Compiler's Notes.

For American association of blood banks, see *http://www.aabb.org*.

CASE NOTES

Admissibility.

Human leucocyte antigen test.

Personal knowledge.

Representation by counsel.

Testimony by deposition.

Timeliness of challenge.

Timely provision of results.

Admissibility.

The trial court did not abuse its discretion in not admitting the curriculum vitae of the doctor who made the human leucocyte antigen (HLA) report but who did not testify. State, Dep't of Health & Welfare ex rel. Osborn v. Altman, 122 Idaho 1004, 842 P.2d 683 (1992).

This section does not apply to the admission of reports of blood tests concerning paternity unless the trial court appoints the qualified expert who performs the tests. State, Dep't of Health & Welfare ex rel. Osborn v. Altman, 122 Idaho 1004, 842 P.2d 683 (1992).

Human Leucocyte Antigen Test.

If the results of human leucocyte antigen tests are properly offered, such are admissible in evidence and should be considered, along with all other evidence, on the issue of paternity, regardless of whether the results exclude paternity. Crain v. Crain, 104 Idaho 666, 662 P.2d 538 (1983).

In divorce action wherein paternity of child was questioned, the failure of the court to consider the human leucocyte antigen tests which indicated extremely high probability that husband was father of the child might very well have changed the result and rejection of the HLA evidence was prejudicial. Crain v. Crain, 104 Idaho 666, 662 P.2d 538 (1983).

Personal Knowledge.

In an action to establish paternity, an expert's report containing the results of court-ordered blood tests met the personal knowledge and validation requirements where an attached affidavit was signed by the supervisor of the blood testing laboratory who attested to the chain of custody of the blood samples and the accuracy of the test results. State of Alaska ex rel. Sweat v. Hansen, 116 Idaho 927, 782 P.2d 50 (Ct. App. 1989).

Representation by Counsel.

The presence of counsel to rebut the presumption of paternity arising from genetic tests would result in de minimis benefits, as the risk of erroneous determinations is already limited by highly accurate blood tests, and as the court may, upon reasonable request by a party, order independent tests. State Dep't of Health & Welfare ex rel. Oregon v. Conley, 132 Idaho 266, 971 P.2d 332 (Ct. App. 1999).

Testimony by Deposition.

Since this section does not require the blood test expert's presence at the trial, the court's appointment of an expert who resided beyond the court's subpoena power was not prejudicial, where the defendant was present when the expert's deposition was taken and extensively cross-examined him. Comish v. Smith, 97 Idaho 89, 540 P.2d 274 (1975).

Timeliness of Challenge.

This section's plain import is that any challenge to the admissibility of a blood test report should be raised 20 days before trial. The purpose of this requirement is to allow the plaintiff sufficient time to subpoena experts to testify on the blood analysis methodology, the chain of custody, or other issues affecting admissibility of the report. The verification itself could be such an issue. An asserted lack of verification may be a ground for objection, but it is not an excuse for making the objection tardily. State of Alaska ex rel. Sweat v. Hansen, 116 Idaho 927, 782 P.2d 50 (Ct. App. 1989).

Timely Provision of Results.

Where the evidence was that the defendant received the results of genetic testing at least six months before trial, his claim that he did not receive the results within the statutorily required twenty-eight day period prior to trial failed. State Dep't of Health & Welfare ex rel. Oregon v. Conley, 132 Idaho 266, 971 P.2d 332 (Ct. App. 1999).

Cited Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015).

RESEARCH REFERENCES

ALR. — Authentication of blood sample taken from human body for purposes other than determining blood alcohol content. 77 A.L.R.5th 201.

§ 7-1117. Expert witnesses appointed by court — Compensation — Payment. — The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of any party be paid by the county, and that, after payment by the parties or the county or both, all or part or none of it be taxed as costs in the action. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

History.

1969, ch. 93, § 16, p. 318.

Idaho Code § 7-1118

§ 7-1118. Expert testimony — When action dismissed. — If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the defendant is not the father of the child, the question of paternity shall be resolved accordingly, and the action shall be dismissed with costs awarded to the defendant. If the experts disagree in their findings or conclusions, the action shall proceed.

History.

1969, ch. 93, § 17, p. 318.

CASE NOTES

Human Leucocyte Antigen Test.

If the results of human leucocyte antigen tests are properly offered, such are admissible in evidence and should be considered, along with all other evidence, on the issue of paternity, regardless of whether the results exclude paternity. Crain v. Crain, 104 Idaho 666, 662 P.2d 538 (1983).

In divorce action wherein paternity of child was questioned, the failure of the court to consider the human leucocyte antigen tests which indicated extremely high probability that husband was father of the child might very well have changed the result and rejection of the HLA evidence was prejudicial. Crain v. Crain, 104 Idaho 666, 662 P.2d 538 (1983).

Cited Gordon v. Hedrick, 159 Idaho 605, 364 P.3d 951 (2015).

§ 7-1119. Presumption of legitimacy — When rebutted. — The presumption of legitimacy of a child born during wedlock is overcome by:

(1) Genetic tests which show that the husband is not the father of the child; or (2) An affidavit of nonpaternity signed by the natural mother and her husband and an affidavit of paternity signed by the natural mother and natural father.

History.

1969, ch. 93, § 18, p. 318; am. 1995, ch. 234, § 5, p. 791.

CASE NOTES

Divorce of Parents.

Where child was born prior to granting of divorce decree, the child is presumed legitimate even though a medical report was introduced later which established defendant was not the father of the child. Miller v. Miller, 96 Idaho 10, 523 P.2d 827 (1974).

Cited Alber v. Alber, 93 Idaho 755, 472 P.2d 321 (1970).

§ 7-1120. Order of filiation. — If the court finds the defendant is the father of the child, it shall make an order of filiation, declaring paternity.

History.

1969, ch. 93, § 19, p. 318.

§ 7-1121. Order for support — Continuance beyond age of 18 — Other payments by father. — (1) In a proceeding in which the court has made an order of filiation, the court may direct a father possessed of sufficient means or able to earn such means to pay monthly or at other fixed periods a fair and reasonable sum for the support and education of the child until the child is eighteen (18) years of age. If the child continues his high school education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, order the continuation of support payments until the child discontinues his high school education or reaches the age of nineteen (19) years, whichever is sooner.

(2) The order of filiation may direct the father to pay or reimburse amounts paid for the support of the child prior to the date of the order of filiation and may also direct him to pay or reimburse amounts paid for: (a) the funeral expenses if the child has died; (b) the necessary expenses incurred by or for the mother in connection with her confinement and recovery; and (c) such expenses in connection with the pregnancy of the mother as the court may deem proper.

(3) If the father is a minor at the time the order is entered, the order shall continue in effect as a valid order after the father reaches majority, and cannot be disaffirmed by the minor himself or personal representatives.

(4) Upon the receipt of a genetic test result with a probability of paternity of at least ninety-eight percent (98%) the court shall, upon motion by a party, order temporary support for the child pending a final order of paternity and support. The support shall be in accordance with the Idaho child support guidelines.

(5) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

History.

1969, ch. 93, § 20, p. 318; am. 1986, ch. 222, § 6, p. 593; am. 1988, ch. 132, § 4, p. 235; am. 1990, ch. 361, § 2, p. 973; am. 1990, ch. 410, § 2, p. 1137; am. 1996, ch. 49, § 3, p. 143; am. 1997, ch. 197, § 1, p. 554; am. 1998, ch. 292, § 2, p. 928.

STATUTORY NOTES

Cross References.

Wages of parents, assignment for child support, § 8-704.

Compiler's Notes.

Section 5 of S.L. 1988, ch. 132 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CASE NOTES

Bankruptcy code.

Burden of proof.

Determination of amount of award.

Bankruptcy Code.

Expenses incurred for the benefit of wife and child of debtor which were paid by the state under this section fell within the exclusion of dischargeability afforded by 11 U.S.C.S. § 523(a)(5). Livengood v. Idaho ex rel. Dep't of Health & Welfare, 157 Bankr. 678 (Bankr. D. Idaho 1993).

Burden of Proof.

The burden of proof rests upon the plaintiff to establish a reasonable sum for the education and support of the child and the financial ability of the defendant. Isaacson v. Obendorf, 99 Idaho 304, 581 P.2d 350 (1978).

Determination of Amount of Award.

The modern view is that the support of the child born out of wedlock should be determined in the same way as the support of the legitimate child,

that is, with reference to the needs of the child and the resources of the father and this section reflects this modern approach and bases the support award in a paternity action on the finding of a reasonable sum for the support and education of the child and the financial ability of the father to make such a payment. Isaacson v. Obendorf, 99 Idaho 304, 581 P.2d 350 (1978).

RESEARCH REFERENCES

ALR. — Liability of father for retroactive child support on judicial determination of paternity, 87 A.L.R.5th 361.

§ 7-1122. Payment to mother or trustee — Report to court. — (1) The court may require the payment to be made to the mother or to some person or corporation designated by the court as trustee. If the child is likely to become a public charge on a county or city, the public assistance official of that county or city shall be designated as trustee. If the mother does not reside within the county in which the court is located, the court shall direct payment to be made to a trustee.

(2) The trustee shall report to the court annually or more often, as the court may direct, the amounts received and paid over.

History.

1969, ch. 93, § 21, p. 318.

§ 7-1123. Change of trustee. — The court, on motion of the plaintiff or otherwise, may at any time for good cause shown substitute another trustee for the one designated and acting.

History.

1969, ch. 93, § 22, p. 318.

STATUTORY NOTES

Compiler's Notes.

Section 23 of S.L. 1969, ch. 93 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 24 of S.L. 1969, ch. 93 read: "The provisions of this act do not apply to children conceived before the effective date hereof." See 1986 amendment of § 7-1107.

Section 26 of S.L. 1969, ch. 93 read: "All laws conflicting with the rights and duties herein granted or imposed are hereby declared to be inapplicable to proceedings under this act."

§ 7-1124. Full faith and credit. — A voluntary acknowledgment of paternity or a determination of paternity by a court or administrative body of any state must be accepted as determinative by the courts of this state and shall be entitled to full faith and credit.

History.

I.C., § 7-1124, as added by 1994, ch. 237, § 3, p. 746.

§ 7-1125. No right to jury trial. — There shall be no right to a jury trial in proceedings under this chapter.

History.

I.C., § 7-1125, as added by 1996, ch. 49, § 4, p. 143.

§ 7-1126. Custody of children — Best interest. — In any proceeding to determine custody under the provisions of this chapter, the court shall apply sections 32-717 through 32-717E, Idaho Code. However, the court shall not consider whether or not the mother or father did or did not voluntarily consent to the adoption of the child or to the relinquishment of parental rights in determining best interest of the child.

History.

I.C., § 7-1126, as added by 2013, ch. 138, § 2, p. 323.

Idaho Code Ch. 12

Chapter 12
ENFORCEMENT OF CHILD SUPPORT ORDERS

Sec.

7-1201. Statement of legislative findings.

7-1202. Definitions.

7-1203. Available remedies.

7-1204, 7-1205. [Repealed.]

7-1206. Department lien for child support delinquency.

§ 7-1201. Statement of legislative findings. — The legislature of the state of Idaho finds that a significant number of people who are owed child support are not paid in accordance with the terms of their child support orders; that this causes a severe financial hardship upon custodial parents and constitutes a significant detriment to the rearing and support of minor children whom the orders intended to support. Further, P.L. 98-378 requires each state to implement statutorily prescribed procedures to improve the effectiveness of child support enforcement. Although the department of health and welfare does not have the authority to establish support orders administratively, the act as amended in 1988 enables the department to give full faith and credit to all legally enforceable support orders issued by other states. The collection remedies required by federal law are enacted in section 7-1203, Idaho Code.

History.

I.C., § 7-1201, as added by 1985, ch. 159, § 1, p. 417; am. 1988, ch. 294, § 3, p. 933.

STATUTORY NOTES

Federal References.

P.L. 98-378 referred to in this section is codified as 26 U.S.C.S., §§ 6103, 6402, 7213 and 42 U.S.C. §§ 602, 603, 606, 651 to 656, 657, 664, 666, 667, 671, 1315, and 1396a. See especially 42 U.S.C.S. § 666.

Compiler's Notes.

The phrase "this act", in the next-to-last sentence, refers to S.L. 1985, ch. 159, which is codified as §§ 7-1107, 7-1201 to 7-1203, 11-603, 11-607, 56-203D, 72-802, and 72-1365. S.L. 1985, ch. 159 was amended by S.L. 1988, ch. 294, which is codified as §§ 7-1107, 7-1702, 7-1203, 11-103, 11-603, 11-607, 59-1317, and 72-1365.

§ 7-1202. Definitions. — As used in this chapter:

(1) "Child support" means a legally enforceable obligation assessed against an individual for the support of a child which shall include medical care, including health insurance premiums for the child, and any amount owing under an order for support during a period in which public assistance was expended.

(2) "Delinquency" means unpaid support for a minor child or spouse which has accrued under an order.

(3) "Department" means the department of health and welfare.

(4) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments.

(5) "Obligor" means any person obligated by order to pay child or spousal support.

(6) "Order" means a judgment, decree, order, or administrative ruling directing a person or persons to pay money for support of a minor child or a spouse.

(7) "Income" means any form of payment to an individual, regardless of source, including, but not limited to, wages, salary, commission, compensation as an independent contractor, worker's compensation, disability, veteran's annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by a public act.

History.

I.C., § 7-1202, as added by 1985, ch. 159, § 1, p. 417; am. 1986, ch. 221, § 10, p. 584; am. 1988, ch. 294, § 1, p. 933; am. 1990, ch. 92, § 1, p. 192; am. 1993, ch. 335, § 6, p. 1244; am. 1994, ch. 308, § 1, p. 963; am. 1998, ch. 207, § 1, p. 733.

STATUTORY NOTES

Compiler's Notes.

Section 9 of S.L. 1994, ch. 308 provided, in part: "Section 7-1202, Idaho Code, as enacted by Section 13, Chapter 335, Laws of 1993" was repealed, effective March 31, 1994.

Section 15 of S.L. 1993, ch. 335, as amended by S.L. 1994, ch. 308, § 10, read: "The provisions of Sections 1 through 7 of this act shall be in full force and effect on and after July 1, 1993."

CASE NOTES

Cited State Dep't of Health & Welfare ex rel. Lisby v. Lisby, 126 Idaho 776, 890 P.2d 727 (1995).

§ 7-1203. Available remedies. — In addition to other remedies available to the department or obligee, collection of any delinquency from an obligor on behalf of an obligee shall be accomplished through any of the following means:

(1) The department shall intercept and withhold tax refunds to satisfy child support obligations pursuant to section 56-203D, Idaho Code.

(2) The department shall intercept and withhold a portion of any unemployment benefit payable to an obligor pursuant to section 72-1365, Idaho Code.

(3) The department shall administer a program to withhold a portion of an obligor's income for the benefit of the obligee pursuant to chapter 12, title 32, Idaho Code.

(4) The department shall intercept and withhold a portion of any veteran's benefits payable to an obligor pursuant to state or federal law.

(5) The department shall attach, garnish, or intercept and withhold a portion of any worker's compensation benefits which are payable to an obligor pursuant to title 72, Idaho Code.

History.

I.C., § 7-1203, as added by 1985, ch. 159, § 1, p. 417; am. 1986, ch. 221, § 11, p. 584; am. 1998, ch. 207, § 2, p. 733.

CASE NOTES

Garnishment of Workers' Compensation Benefits.

Where injured worker received a lump sum settlement of worker's compensation benefits, and worker owed child support and arrearages from two previous marriages and support obligations for the care of another child, the exemption provision of § 72-802, which exempts all worker's compensation awards from creditors claims did not apply to claims for the enforcement of support orders as this section granted the department of health and welfare garnishment rights and other remedies against the

proceeds of worker's compensation awards. State Dep't of Health & Welfare ex rel. Lisby v. Lisby, 126 Idaho 776, 890 P.2d 727 (1995).

§ 7-1204, 7-1205. Withholding of income — Application, notice and hearing — Employer liable — Exception. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1998, ch. 292, § 1, effective July 1, 1998:

§ 7-1204, which comprised I.C., § 7-1204, as added by 1985, ch. 159, § 1, p. 417; am. 1988, ch. 294, § 2, p. 933; am. 1990, ch. 361, § 3, p. 973; am. 1993, ch. 335, §§ 7 and 14, p. 1244; am. 1994, ch. 308, § 2, p. 963.

§ 7-1205, which comprised I.C., § 7-1205, as added by 1985, ch. 159, § 1, p. 417; am. 1995, ch. 201, § 1, p. 693.

§ 7-1206. Department lien for child support delinquency. — (1) Upon a delinquency under a child support order for which the department is or has been providing child support enforcement services, a lien arises upon and attaches to the real and personal property of an obligor. When the amount of the lien is equal to or greater than the total support owing for at least ninety (90) days, or two thousand dollars ($2,000), whichever is less, the lien may be perfected by a filing with the office of the secretary of state. A perfected lien shall include all subsequently arising delinquencies. When a lien has been perfected pursuant to this section and the underlying delinquency reaches a zero balance or is otherwise satisfied, the lien is automatically released. Any support order or decree issued or modified after the effective date of this act shall include a provision notifying the obligor that a lien will arise automatically upon a delinquency. A notice of release of lien shall be filed pursuant to section 45-1908, Idaho Code.

(2) A lien arising out of a child support order or delinquency under the laws of another state shall be given full faith and credit as if the lien arose out of a child support order or delinquency under Idaho law.

(3) The department shall notify each obligor by certified mail of the filing of the lien at the same time the notice is delivered to the secretary of state. No such lien may be enforced until ten (10) days after notice of the filing of the lien has been given to the obligor.

History.

I.C., § 7-1206, as added by 1998, ch. 207, § 4, p. 733.

STATUTORY NOTES

Prior Laws.

Former § 7-1206, which comprised I.C., § 7-1206, as added by 1994, ch. 308, § 3, p. 963, was repealed by S.L. 1998, ch. 207, § 3, effective July 1, 1998.

Compiler's Notes.

The phrase “the effective date of this act” in subsection (1) refers to the effective date of S.L. 1998, ch. 207, which was July 1, 1998.

Idaho Code Ch. 13

Chapter 13
JUDICIAL CONFIRMATION

Sec.

7-1301. Short title.

7-1302. Legislative declaration.

7-1303. Definitions.

7-1304. Petition for judicial examination and determination of validity of bond, obligation, agreement, or security instrument — Facts — Verification — Public hearing.

7-1305. Action in nature of proceedings in rem — Jurisdiction of parties.

7-1306. Notice of filing of petition — Contents — Service by publication and posting.

7-1307. Owner of property or interested party may move to dismiss or answer — Effect of failure to appear.

7-1308. Hearing — Findings — Judgment and decree — Costs — Entitlement to relief.

7-1309. Appeal of judgment — Time for application.

7-1310. Applicability of Idaho rules of civil procedure — Early hearings.

7-1311. Effect of chapter.

7-1312. Severability.

7-1313. Attorney fees.

§ 7-1301. Short title. — This chapter shall be known as the "Judicial Confirmation Law."

History.

I.C., § 7-1301, as added by 1988, ch. 219, § 1, p. 414.

CASE NOTES

Cited Koch v. Canyon County, 145 Idaho 158, 177 P.3d 372 (2008).

§ 7-1302. Legislative declaration. — The legislature of the state of Idaho determines, finds and declares in connection with this chapter:

(1) An early judicial examination into and determination of the validity of the power of any political subdivision to issue bonds or obligations and execute any agreements or security instruments therefor promotes the health, safety and welfare of the people of the state.

(2) The provision in this chapter of the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities pertaining to issuance of bonds or execution of obligations by political subdivisions will serve a public function and effect a public purpose.

(3) Any notice provided for in this chapter is reasonably calculated to inform each person of interest in any proceedings thereunder which may directly and adversely affect his legally protected interests, if any.

(4) Any act prior to or subsequent to the effective date of this chapter may be confirmed pursuant to this chapter.

History.

I.C., § 7-1302, as added by 1988, ch. 219, § 1, p. 414; am. 1996, ch. 235, § 1, p. 763.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this chapter" in subsection (4) refers to the effective date of S.L. 1988, ch. 219, which was effective March 29, 1988.

Idaho Code § 7-1303

§ 7-1303. Definitions. — Except where the context otherwise requires, the definitions in this section govern the construction of the judicial confirmation law. All other words should be given their ordinary and customary meaning.

(1) "Agreement" means any agreement or contract between a political subdivision and individuals, corporations, or any other political subdivision or public agency as authorized by section 67-2328, Idaho Code, relating to bonds or obligations of the political subdivision.

(2) "Bond" means any agreement, which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of any political subdivision or a fund thereof, where the political subdivision agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers.

(3) "Executive officer" means the de jure or de facto governor of this state, mayor, chairman, president or other titular head or chief official of the political subdivision proceeding under this chapter, but "executive officer" does not include a city manager, county manager or other chief administrator of a political subdivision who is not its elected head.

(4) "Governing body" means:

(a) The state commission or state board responsible for the exercise of a power by the state or responsible for an instrument, act or project of the state to which court proceedings authorized by this chapter and initiated by the state pertain; and

(b) The city council, board of commissioners, board of trustees, board of directors, board of regents or other legislative body of a political subdivision under this chapter.

Governing body does not include the legislature of the state of Idaho if the political subdivision is the state or any corporation, instrumentality or other agency thereof.

(5) “Obligation” means an agreement that evidences an indebtedness of any political subdivision, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(6) “Political subdivision” means the state of Idaho, or any corporation, instrumentality or other agency thereof, or any incorporated city, or any county, school district, water and/or sewer district, drainage district, special purpose district or other corporate district constituting a political subdivision of this state, any quasi-municipal corporation, housing authority, urban renewal authority, other type of authority, any college or university, or any other body corporate and politic of the state of Idaho, but excluding the federal government.

(7) “Security instrument” means any contract, deed or other security or other document of any kind, proposed, or executed or otherwise made as security for bonds or obligations issued by a political subdivision.

History.

I.C., § 7-1303, as added by 1988, ch. 219, § 1, p. 414.

Idaho Code § 7-1304

§ 7-1304. Petition for judicial examination and determination of validity of bond, obligation, agreement, or security instrument — Facts — Verification — Public hearing. — (1) In its discretion the governing body of a political subdivision may file or cause to be filed a petition at any time in the judicial district court in and for the district in which the political subdivision is located wholly or in part, praying a judicial examination and determination of the validity of any bond or obligation or of any agreement or security instrument related thereto, of the political subdivision, whether or not such bond or obligation agreement has been validly exercised, or executed. The filing of the petition shall have been authorized by the governing body having adopted a resolution or ordinance authorizing such filing after conducting a public hearing as defined in subsection (3) of this section.

(2) Such petition shall make a clear statement of the legal authority for the proposed expenditure, shall set forth the facts on which the validity of such bond or obligation is founded and shall be verified by the executive officer of the political subdivision.

(3) Prior to the filing of the petition described in subsection (1) above, the governing body of a political subdivision shall hold a public hearing to consider whether it should adopt a resolution or ordinance authorizing the filing of the petition. Any person may make a request for notice of all meetings of the governing body of a political subdivision at which a public hearing will be held to consider a resolution or ordinance authorizing the filing of a petition described in subsection (1) of this section, by submitting to the governing body a written request for notice, which request shall be valid until December 31 of the year in which it was filed. The governing body of the political subdivision shall send a notice by certified mail to all persons who have requested notice, to the address provided in the request for notice, at least fourteen (14) days before the public hearing will be held, informing them of the time and place of the public hearing which will be held to consider the resolution or ordinance authorizing the filing of the petition. A petition or judgment approving a petition shall not be defective for failure to strictly comply with this notice provision if compliance with the notice requirement is substantial and in good faith. The public hearing

shall be conducted at least fourteen (14) days prior to the adoption of the resolution or ordinance. At least fifteen (15) days prior to the date set for the public hearing, notice of the time, place and summary of the matter shall be published in the official newspaper, or papers of general circulation within the jurisdiction. The notice shall be in the form and content described in subsection (2) of section 7-1306, Idaho Code, but need be published only once.

History.

I.C., § 7-1304, as added by 1988, ch. 219, § 1, p. 414; am. 1994, ch. 173, § 1, p. 399; am. 1996, ch. 235, § 2, p. 763.

§ 7-1305. Action in nature of proceedings in rem — Jurisdiction of parties. — The action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting, as provided in this chapter.

History.

I.C., § 7-1305, as added by 1988, ch. 219, § 1, p. 414.

§ 7-1306. Notice of filing of petition — Contents — Service by publication and posting. — (1) Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any instrument therein mentioned may be examined.

(2) The notice shall be served: (a) By publication at least once a week for three (3) consecutive weeks by three (3) weekly insertions, in the official newspaper or papers of general circulation within the jurisdiction; the publication shall meet the following requirements: The notice shall be of a format and in such size and type that distinguishes it from legal notices. The notice shall be requested to run in the newspaper's main news section, far forward, and the rate to be paid for advertising placed under this section shall be no more than the current rate card posted by the newspaper for similar forms of advertising in volume and frequency to that which is ordered, in order to meet the requirements of this section; provided, the rates and type requirements provided in section 60-105, Idaho Code, for public agency advertisements shall not apply to advertisements published under the requirements of this section; and (b) By posting the same in a prominent place at or near the main door of the administrative office of the political subdivision at least thirty (30) days prior to the date fixed in the notice for the hearing on the petition.

(3) Jurisdiction shall be complete after such publication and posting.

History.

I.C., § 7-1306, as added by 1988, ch. 219, § 1, p. 414; am. 1994, ch. 173, § 2, p. 399.

§ 7-1307. Owner of property or interested party may move to dismiss or answer — Effect of failure to appear. — (1) Any owner of property, taxpayer, elector or rate payer, in the political subdivision or any other person interested in the bond, obligation or agreements or security instrument related thereto, or otherwise interested in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court.

(2) The petition shall be taken as confessed by all persons who fail to so appear.

History.

I.C., § 7-1307, as added by 1988, ch. 219, § 1, p. 414.

§ 7-1308. Hearing — Findings — Judgment and decree — Costs — Entitlement to relief. — (1) The filing of the petition and publication and posting of the notice as provided in section 7-1306, Idaho Code, shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting each question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.

(2) In making the findings set forth in subsection (1) of this section, the court shall find upon what legal authority the political subdivision bases the petition for the proposed bond, obligation or agreement and whether such bond, obligation or agreement is permissible under the general laws of the state or is permissible as an ordinary and necessary expense of the political subdivision authorized by the general laws of the state and shall determine if the political subdivision is entitled to the relief sought. If in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to establish the truth of any averment by evidence or make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

History.

I.C., § 7-1308, as added by 1988, ch. 219, § 1, p. 414; am. 1994, ch. 173, § 3, p. 399; am. 1996, ch. 235, § 3, p. 763.

CASE NOTES

Application.

Construction.

Application.

District court properly examined other agreements that affected the auditorium district's lease of a new facility where the lease had been challenged under § 7-1304. In re Greater Boise Auditorium Dist. v. Frazier, 159 Idaho 266, 360 P.3d 275 (2015).

Construction.

A court must consider a separate contract not immediately before it as long as it affects the contract at issue, and may then adjudge the question presented. Courts have a duty to examine other documents which affect the question submitted, and then to determine the propriety of the contracts before them. In re Greater Boise Auditorium Dist. v. Frazier, 159 Idaho 266, 360 P.3d 275 (2015).

§ 7-1309. Appeal of judgment — Time for application. — Appeal of the judgment of the court may be had as in other civil cases, except that such appeal must be filed within forty-two (42) days after the time of the rendition of such judgment.

History.

I.C., § 7-1309, as added by 1988, ch. 219, § 1, p. 414; am. 1989, ch. 114, § 1, p. 259.

§ 7-1310. Applicability of Idaho rules of civil procedure — Early hearings. — (1) The Idaho rules of civil procedure shall govern in matters of pleadings and practice where not otherwise specified herein.

(2) The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

(3) All cases in which there may arise a question of the validity of any matter under this chapter shall be advanced as a matter of immediate public interest and concern, and be heard at the earliest practicable time.

History.

I.C., § 7-1310, as added by 1988, ch. 219, § 1, p. 414.

§ 7-1311. Effect of chapter. — (1) This chapter, without reference to other statutes of this state, except as otherwise expressly provided in this chapter, shall constitute full authority for the exercise of the powers herein granted.

(2) The powers conferred by this chapter shall be in addition and supplemental to, and not in substitution for, and the limitations imposed hereby shall not affect the powers conferred by, any other law.

(3) Nothing contained in this chapter shall be construed as preventing the exercise of any power granted to the political subdivision, acting by and through the governing body, or any officer, agent or employee of the political subdivision, or otherwise, by any other law.

(4) No part of this chapter shall repeal or affect any other law or part thereof, it being intended that this chapter shall provide a separate method of accomplishing its objectives and not an exclusive one; and this chapter shall not be construed as repealing, amending or changing any such other law.

History.

I.C., § 7-1311, as added by 1988, ch. 219, § 1, p. 414.

§ 7-1312. Severability. — If any provisions of this act or its application to any person, political subdivision, or circumstance is held invalid, the remainder of the act or the application of the provision to other persons, political subdivisions or circumstances is not affected.

History.

I.C., § 7-1312, as added by 1988, ch. 219, § 1, p. 414.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1988, ch. 219, which is codified as §§ 7-1301 to 7-1312.

Effective Dates.

Section 2 of S.L. 1988, ch. 219 declared an emergency. Approved March 29, 1988.

Idaho Code § 7-1313

§ 7-1313. Attorney fees. — Whenever a court shall determine that a political subdivision is not entitled to the relief sought or that this chapter has not been substantially complied with and enters a judgment denying the petition, the court shall award reasonable attorney fees to any owner of property, taxpayer, qualified elector or rate payor or any other interested person who has appeared and moved to dismiss or answer the petition.

History.

I.C., § 7-1313, as added by 1994, ch. 173, § 4, p. 399; am. 1996, ch. 235, § 4, p. 763.

CASE NOTES

Award Proper.

Where a trial court erred in granting a city's petition for judicial confirmation to allow it to enter into an agreement for the expansion of its airport parking facilities, the city was not entitled to attorney fees on appeal. However, because respondent prevailed on appeal against the city's petition for judicial confirmation, he was entitled to attorney fees. City of Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006), overruled on other grounds, City of Challis v. Consent of the Governed Caucus, 159 Idaho 398, 361 P.3d 485 (2015).

Idaho Code Ch. 14

Chapter 14
FAMILY LAW LICENSE SUSPENSIONS

Sec.

7-1401. Statement of legislative intent.

7-1402. Definitions.

7-1403. Grounds for suspension of a license.

7-1404. Jurisdiction for suspension of a license.

7-1405. Commencement of judicial proceeding for suspension of license.

7-1406. Notice.

7-1407. Commencement of administrative proceeding by the department.

7-1408. Confirmation of nonlicensure.

7-1409. Hearing to contest suspension of license or licenses.

7-1410. Order suspending a license.

7-1411. Default.

7-1412. Action by licensing authority.

7-1413. Vacating or staying an order suspending a license.

7-1414. Proceeding to reinstate the suspension.

7-1415. Fees and penalties.

7-1416. Cooperation between licensing authorities and the department of health and welfare.

7-1417. Final order of suspension.

§ 7-1401. Statement of legislative intent. — The legislature of the state of Idaho finds that the remedy of suspension of a wide variety of licenses is needed to increase the effectiveness of enforcement of child support orders, compliance with subpoenas in paternity and child support cases, and compliance with orders for visitation with minor children. The legislature intends that there be no exceptions to the licenses, as defined in this chapter, that are the subject of suspension, in order to promote the well-being of Idaho's children.

History.

I.C., § 7-1401, as added by 1996, ch. 429, § 1, p. 1457.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1996, ch. 429 provided that the act should be in full force and effect on and after January 1, 1997.

CASE NOTES

Ex Post Facto Laws.

The Family Law License Suspensions Act, § 7-1401 et seq., does not violate the ex post facto prohibition of Idaho Const., Art. I, § 16 or U.S. Const., Art. I, § 9, cl. 3, because the act does not invoke criminal jurisprudence. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

§ 7-1402. Definitions. — (1) "Child support order" means a legally enforceable obligation, issued by a court or administrative body, assessed against an individual for the support of a child, which shall include medical care, health insurance premiums for the child, child care expenses and any amount owing under an order for support during a period in which public assistance was expended.

(2) "Current support" means the amount owing for the present month pursuant to a child support order, excluding amounts ordered to satisfy a delinquency.

(3) "Delinquency" means, for purposes of this chapter, the amount of unpaid support that has accrued from the date a child support order is entered, excluding the present month, in an amount equal to or greater than the total support owing for at least ninety (90) days, or two thousand dollars ($2,000), whichever is less.

(4) "Department" means the Idaho department of health and welfare.

(5) "License" means a license, certificate, permit or other authorization that:

(a) Is issued by a licensing authority pursuant to any provision of Idaho Code;

(b) Is subject to suspension, withdrawal, revocation, forfeiture, termination, or an action equivalent to any of these, by the issuing licensing authority; and

(c) A person must obtain to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing, for which a license or permit is required; and

(d) Does not constitute a property interest.

(6) "Licensee" means any person who possesses a valid license in active status or who has a legal right or privilege to activate or receive a license.

(7) "Licensing authority" means a department, commission, board, office, agency or other unit of the state or political subdivision that issues a license.

(8) "Obligee" means any person, state agency or local child support registry entitled by order to receive child support payments.

(9) "Obligor" means any person obligated by order to pay child support.

(10) "Visitation" means custodial period, custodial schedule, residential schedule, parenting, or parenting time.

History.

I.C., § 7-1402, as added by 1996, ch. 429, § 1, p. 1457; am. 1998, ch. 250, § 1, p. 815.

CASE NOTES

Delegation of visitation.

"Property interest".

Delegation of Visitation.

Father deployed to Iraq could delegate his right to visitation with his daughter to his parents. Webb v. Webb, 143 Idaho 521, 148 P.3d 1267 (2006).

"Property Interest".

Given its specific reference in paragraph (5)(c) and its integral role in the enforcement of child support orders, a driver's license is not an exempt "property interest" under paragraph (5)(d) of this section. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

§ 7-1403. Grounds for suspension of a license. — In addition to any other basis provided by Idaho law for suspension of a license, a licensee is subject to suspension of a license if the licensee:

(1) Is an obligor who has a delinquency as defined in section 7-1402(3), Idaho Code;

(2) Has failed to comply with a subpoena in a paternity or child support proceeding; or

(3) Has substantially failed to comply with an order providing for visitation with a minor child.

History.

I.C., § 7-1403, as added by 1996, ch. 429, § 1, p. 1457; am. 1998, ch. 250, § 2, p. 815.

CASE NOTES

Delegation of Visitation.

Father deployed to Iraq could delegate his right to visitation with his daughter to his parents. Webb v. Webb, 143 Idaho 521, 148 P.3d 1267 (2006).

§ 7-1404. Jurisdiction for suspension of a license. — (1) Upon petition of an obligee of a child support order, a person entitled to visitation with a minor child pursuant to court order, or the department of health and welfare, a court may issue an order suspending a license on any of the grounds provided in section 7-1403, Idaho Code.

(2) Upon notification by the department of a child support delinquency, a licensing authority shall initiate proceedings to suspend a license in accordance with its statutory process, petition the court, or refer the matter to the department to initiate proceedings for suspension of the license in accordance with the requirements of this chapter. Upon referral, or if the licensing authority takes no action within thirty (30) days after notification of the delinquency by the department, the department is authorized to commence a license suspension proceeding under this chapter. The licensing authority shall notify the department of all action taken in response to the notification of the delinquency.

(3) The department may commence an administrative proceeding under this chapter to suspend a license for failure to comply with a subpoena in a paternity or child support proceeding.

(4) More than one (1) license may be the subject of a suspension proceeding under this chapter.

(5) An order issued pursuant to this chapter does not prevent the obligee, department, or individual entitled to visitation under a court order, from seeking any other remedy provided by law or from seeking additional relief under this chapter.

History.

I.C., § 7-1404, as added by 1996, ch. 429, § 1, p. 1457.

CASE NOTES

Jurisdiction.

Notification.

Jurisdiction.

Child support arrearages equaling, or in excess of, the total support owing at least 90 days or $ 2,000, whichever is less, provide the department of health and welfare with adequate grounds to initiate license suspension proceedings under this section. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

The court, the department of transportation, and the department of health and welfare each have jurisdiction under this section to commence proceedings to suspend a driver's license to enforce child support orders. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

Notification.

Because the Idaho department of transportation (DOT) has referred all child support cases which qualify for driver's license suspension to the department of health and welfare (DHW) for the initiation of license suspension proceedings, it is not necessary for DHW to notify DOT of each child support delinquency case before commencing license suspension proceedings against a licensee. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

§ 7-1405. Commencement of judicial proceeding for suspension of license. — (1) A petition for suspension of a license may be commenced in the magistrate division of the district court of the county where the child support order or order for visitation was issued; and no filing fees shall be charged for seeking only the relief provided under this chapter. The petition shall allege:

(a) The name and, if known, social security number of the licensee; (b) The type or types of license or licenses the licensee is believed to hold and the name of each licensing authority; (c) The amount owed under a child support order, the amount of support paid and the amount of the delinquency, the failure to comply with a subpoena in a paternity or child support proceeding, or the manner in which a licensee has failed to comply with an order for visitation; and (d) The last known address of the licensee.

(2) A petition to suspend a license for a child support delinquency shall include a certified copy of the record of child support payments maintained by the department or local child support registry.

(3) A copy of the filed petition shall be delivered to the licensee by personal service according to the Idaho rules of civil procedure.

History.

I.C., § 7-1405, as added by 1996, ch. 429, § 1, p. 1457; am. 1997, ch. 317, § 1, p. 938; am. 1998, ch. 250, § 3, p. 815.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1997, ch. 317 declared an emergency. Approved January 1, 1997.

§ 7-1406. Notice. — Upon commencement of a proceeding for suspension of a license under this chapter, the petitioner shall also serve the licensee notice:

(1) Of the licensee's right to a hearing; (2) That the licensee has twenty-one (21) days after service to request a hearing; (3) That the license will be suspended if there is no timely request for a hearing or the licensee fails without good cause to appear for a scheduled hearing; and (4) That the license will not be suspended if the licensee pays the delinquency and the current support obligation in full; demonstrates compliance with a subpoena in a paternity or child support proceeding; demonstrates compliance with an order for visitation; pays the current support obligation in full and enters into a reasonable schedule for repayment of any child support delinquency; or establishes good cause why the license should not be suspended.

History.

I.C., § 7-1406, as added by 1996, ch. 429, § 1, p. 1457; am. 1997, ch. 317, § 2, p. 938; am. 1998, ch. 250, § 4, p. 815.

§ 7-1407. Commencement of administrative proceeding by the department. — The department shall commence an administrative proceeding to suspend a license by serving the licensee a notice that contains the information required for the petition and notice in sections 7-1405 and 7-1406, Idaho Code. Service of the notice may be by personal service or certified mail.

History.

I.C., § 7-1407, as added by 1996, ch. 429, § 1, p. 1457.

§ 7-1408. Confirmation of nonlicensure. — The petitioner or department shall notify the appropriate licensing authority of the commencement of a judicial or administrative proceeding to suspend a license. Notwithstanding any provision of the Idaho public records act, chapter 1, title 74, Idaho Code, or other statute or ordinance, the licensing authority shall then notify the petitioner or the department if the individual named in the petition is not a licensee.

History.

I.C., § 7-1408, as added by 1996, ch. 429, § 1, p. 1457; am. 2015, ch. 141, § 7, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted "chapter 1, title 74" for "chapter 3, title 9" in the last sentence.

§ 7-1409. Hearing to contest suspension of license or licenses. — (1) A request for a hearing shall be filed with the court or department by the licensee not later than twenty-one (21) days after the date of service of the notice. If a request for hearing is timely filed, the court or department shall promptly schedule and notify each party of the date, time and location of the hearing. A request for a hearing stays the suspension of a license or licenses.

(2) A record of child support payments prepared by the department or a local child support registry is evidence that payments were made. A certified copy of the record shall be admitted as evidence at a hearing under this chapter.

History.

I.C., § 7-1409, as added by 1996, ch. 429, § 1, p. 1457.

§ 7-1410. Order suspending a license. — (1) The court, licensing authority or department shall issue an order suspending a license unless:

(a) After notice and hearing, the licensee is found to have paid the delinquency and the current month's support in full, or complied with the subpoena;

(b) The department or obligee files a certification that the obligor has paid current support and has entered into a reasonable schedule for repayment of any child support delinquency; or

(c) At a hearing, the licensee shows other good cause why the request for license suspension should be denied or stayed.

(2) The court shall issue an order suspending a license for a period up to one hundred eighty (180) days for substantial noncompliance with an order for visitation with the minor child.

(3) The order suspending a license shall include the last known address of the licensee.

(4) An order suspending a license by the court or department shall also state that the licensee is subject to the penalties of the licensing authority if a final order of suspension is violated.

(5) A final order suspending a license issued by a court or the department shall be forwarded to the appropriate licensing authority.

(6) If the court or department finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice.

History.

I.C., § 7-1410, as added by 1996, ch. 429, § 1, p. 1457; am. 1998, ch. 250, § 5, p. 815.

CASE NOTES

Cited Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

§ 7-1411. Default. — The court or department shall deem the allegations of the petition or notice to be admitted and shall issue an order suspending a license if the licensee fails to make a timely request for a hearing or fails to appear at a hearing without good cause. The entry of the default and issuance of any subsequent order shall be pursuant to IRCP 55.

History.

I.C., § 7-1411, as added by 1996, ch. 429, § 1, p. 1457; am. 1997, ch. 317, § 3, p. 938.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1997, ch. 317 declared an emergency and provided that the act should be in effect on and after its passage and approval retroactive to January 1, 1997. Approved March 24, 1997.

§ 7-1412. Action by licensing authority. — (1) On receipt of a final order suspending a license, the licensing authority shall summarily suspend the license effective the date the order became final, without additional review or hearing.

(2) A licensing authority may not review, vacate, stay, withhold or reconsider a final order suspending a license.

(3) A summary suspension pursuant to this chapter shall constitute a reportable disciplinary action.

(4) A licensing authority is immune from liability for any act performed pursuant to this chapter.

History.

I.C., § 7-1412, as added by 1996, ch. 429, § 1, p. 1457.

§ 7-1413. Vacating or staying an order suspending a license. — (1) Upon motion, a court shall issue an order vacating the suspension of a license due to nonpayment of child support if the licensee is found to have paid all current and delinquent child support, or shall stay the suspension for one hundred eighty (180) days if the licensee pays the current support obligation and enters into a repayment agreement. The moving party shall notify the petitioner and the department, if the department is providing child support services pursuant to title IV-D of the social security act or chapter 2, title 56, Idaho Code, of the pendency of these proceedings.

(2) The department shall vacate the suspension of a license ordered by the department upon payment of all current and delinquent child support, or shall stay the suspension for one hundred eighty (180) days if the licensee pays the current support obligation and enters into a repayment agreement.

(3) If the suspension has been stayed and if, at the end of one hundred eighty (180) days, the licensee has maintained current support payments and is in compliance with a repayment agreement, the suspension of the license shall be vacated.

(4) The court or department shall vacate an order suspending a license due to noncompliance with a subpoena, if the licensee complies with the subpoena in a paternity or child support proceeding.

(5) The court may stay an order suspending a license due to substantial noncompliance with a visitation order, for up to one hundred eighty (180) days, upon the licensee's reasonable assurance of compliance, and shall vacate the suspension if the licensee has complied with the order for visitation during the stay.

(6) The licensing authority shall be notified if the suspension of a license is vacated or stayed. On receipt of such notice, the licensing authority shall restore the licensee to active status upon payment of any applicable fees and satisfaction of any other licensing requirements.

History.

I.C., § 7-1413, as added by 1996, ch. 429, § 1, p. 1457; am. 1998, ch. 250, § 6, p. 815.

STATUTORY NOTES

Federal References.

Title IV-D of the Social Security Act, cited in subsection (1), is codified as 42 U.S.C.S. § 651 et seq.

§ 7-1414. Proceeding to reinstate the suspension. — (1) The obligee or department may file a motion with the court to lift the stay and reinstate the suspension of a license due to nonpayment of child support if the licensee does not maintain current support payments or fails to comply with the terms of a repayment agreement entered into by the licensee.

(2) A person entitled to visitation under an order of a court may file a motion to lift the stay and reinstate the suspension of a license if the licensee fails to comply with the order for visitation. The motion shall allege the manner in which the licensee failed to comply with the order for visitation, and request a hearing.

(3) Upon a motion to lift a stay of an order suspending a license, notice of a hearing shall be provided by personal service or by mail not less than fourteen (14) days prior to the hearing.

(4) The department may also commence administrative proceedings to lift a stay issued by the department, by serving notice alleging the failure to maintain current support payments or to comply with a repayment plan, and notice of a hearing not less than fourteen (14) days before the date of the hearing. Service of the notice by the department shall be by personal service or certified mail.

(5) If the licensee is found not to be maintaining current support payments or not to be in compliance with the terms of a repayment plan or order for visitation, the order suspending a license shall be reinstated and the licensing authority shall be promptly informed of the suspension. The licensing authority shall reinstate the suspension of the license effective the date the order becomes final.

History.

I.C., § 7-1414, as added by 1996, ch. 429, § 1, p. 1457.

Idaho Code § 7-1415

§ 7-1415. Fees and penalties. — A person who is the subject of a final order suspending a license is not entitled to a refund for any fee or deposit paid to the licensing authority. Pursuant to its statute and rules, a licensing authority may charge fees or impose penalties on a licensee whose license is suspended under this chapter. A person who continues to engage in the activity after an order of suspension has become final shall be subject to the same penalties as any person engaging in the activity without a license.

History.

I.C., § 7-1415, as added by 1996, ch. 429, § 1, p. 1457.

§ 7-1416. Cooperation between licensing authorities and the department of health and welfare. — (1) Notwithstanding any provision of the Idaho public records act, chapter 1, title 74, Idaho Code, or other statute or ordinance, upon request of the department a licensing authority shall provide the name, address, social security number, license renewal date and other identifying information for licensees. The information shall be provided in a manner agreed to by the licensing authority and the department.

(2) The department may enter into a cooperative agreement with a licensing authority to administer this chapter in a cost-effective manner.

History.

I.C., § 7-1416, as added by 1996, ch. 429, § 1, p. 1457; am. 2015, ch. 141, § 8, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” near the beginning of subsection (1).

§ 7-1417. Final order of suspension. — (1) A license suspension order issued by the court shall be final and conclusive between the parties unless an appeal is filed within twenty-eight (28) days.

(2) A license suspension order issued by a hearing officer of the department shall be final and conclusive between the parties unless an appeal to district court is filed within twenty-eight (28) days, notwithstanding the provisions of section 67-5243, Idaho Code.

History.

I.C., § 7-1417, as added by 1996, ch. 429, § 1, p. 1457.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1996, ch. 429 provided that the act shall be in full force and effect on January 1, 1997.

Chapter 15
SMALL LAWSUIT RESOLUTION ACT

Sec.

7-1501. Short title.

7-1502. Authorization.

7-1503. Actions to which the Idaho civil evaluation option applies — Initiation of process — Option to mediate — Motions for removal from evaluation.

7-1504. Selection of evaluator — Court administration of procedure — Rules, standards and procedures — Exemption from operation of the chapter.

7-1505. Qualifications, appointment and compensation of evaluators.

7-1506. Evaluator authority — Procedures relating to service, filing and computation of time.

7-1507. Discovery.

7-1508. Prehearing and hearing procedures.

7-1509. Evaluation decision — Trial de novo — Miscellaneous.

7-1510. Right to trial.

7-1511. Severability.

7-1512. Statistical records — Compilation of evaluator list.

§ 7-1501. Short title. — This chapter shall be referred to as the "Small Lawsuit Resolution Act."

History.

I.C., § 7-1501, as added by 2002, ch. 137, § 1, p. 380.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1502. Authorization. — To reduce the cost and expense of litigation and encourage the swift, fair and cost-effective resolution of disputes, the legislature hereby establishes a system to encourage civil litigants to resolve their disputes through alternative dispute resolution. The procedures to be utilized under this chapter, while based on the alternative dispute resolution processes of arbitration, mediation, and early neutral evaluation, are intended to be as informal as practicable to accomplish these concurrent objectives.

History.

I.C., § 7-1502, as added by 2002, ch. 137, § 1, p. 380.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1503. Actions to which the Idaho civil evaluation option applies — Initiation of process — Option to mediate — Motions for removal from evaluation. — (1) Civil actions in which the sole relief sought is a money judgment in which the parties agree that the total claims for all damages sought by a party do not exceed thirty-five thousand dollars ($35,000) shall be subject to the provisions of this chapter. This chapter shall not apply to appeals from the magistrates division, disputes subject to arbitration under chapter 9, title 7, Idaho Code, proceedings in the small claims division of the district court, cases seeking a punitive damages award, or cases in which this chapter has been previously invoked.

(2) The provisions of this chapter may be initiated by any party by the filing of a notice with the court. The notice shall be filed at least one hundred fifty (150) days prior to a scheduled trial but, without the consent of all parties, may not be filed within forty-five (45) days following the service of a complaint. For actions pending in the magistrates division, however, notice shall be filed at least one hundred (100) days prior to a scheduled trial but, without consent of all the parties, may not be filed within thirty (30) days following the service of a complaint. The trial court shall retain jurisdiction over a case proceeding under this chapter and the case shall remain on the court's active calendar.

(3) The parties shall confer after the filing of the notice to determine if they wish to undertake evaluation or mediation. If they agree to mediate, the parties may agree upon a mediator or utilize as mediator an individual selected pursuant to the evaluator selection provisions of this chapter. If a mediation has been conducted under this chapter, and the mediation has not resulted in the settlement of all claims, within fourteen (14) days following such mediation, the parties shall file a notice with the clerk of the court that a mediation has been completed, that all claims have not been settled and specifying the claims which remain.

(4) If the parties are not able to agree whether to undertake a mediation or an evaluation under this chapter, a party has seven (7) days after the filing of the notice of the initiation of the provisions of this chapter to file a motion seeking the court to order which form of alternative dispute

resolution will be used. The moving party has a right to a hearing pursuant to the Idaho rules of civil procedure. In making its determination on the motion, the court shall consider, among other factors it deems relevant, the nature of the claim(s) and the defense(s), the prior experience, if any, of the parties or their counsel with mediation or evaluation, in this or other cases, the potential likelihood that the facts alleged in a claim, if proven, will lead to liability of one party to another, and the complexity of the case. If the court does not determine that mediation is a preferable means of alternative dispute resolution for the particular case, it shall order the parties to conduct an evaluation under the provisions of this chapter. However, if the court determines that neither mediation nor evaluation is appropriate in the case, it may order that the case proceed to trial in accordance with the Idaho rules of civil procedure.

(5) Any party may move the court for removal from the evaluation at any stage for good cause including, but not limited to, a substantial change in circumstances or a reasonable potential for the moving party to later seek amendment to its pleadings to allow that party to pursue punitive damages, making the evaluation option an inappropriate method to obtain resolution of the particular dispute.

History.

I.C., § 7-1503, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 1, p. 102; am. 2018, ch. 244, § 1, p. 567.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 244, substituted "thirty-five thousand dollars ($35,000)" for "twenty-five thousand dollars ($25,000)" in the first sentence in subsection (1).

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Idaho Code § 7-1504

§ 7-1504. Selection of evaluator — Court administration of procedure — Rules, standards and procedures — Exemption from operation of the chapter. — (1) All magistrate judges, district judges and appellate court judges and justices, whether classified as sitting, senior or retired, are authorized to act as civil litigation evaluators. The supreme court may establish by rule, procedures for the appointment and use, where available, of such judges as evaluators for the purposes of this chapter.

(2) The supreme court shall maintain a list of private civil litigation evaluators who are approved to serve in each district pursuant to this chapter and any rules adopted by the supreme court. Each county's clerk of the court shall from time to time be provided by the supreme court a list of evaluators who are approved to serve in that county pursuant to this chapter and any rules adopted by the supreme court.

(3) Unless a sitting or senior judge is assigned by the supreme court or administrative judge as an evaluator, or unless the parties have agreed in advance to the selection of a particular evaluator, upon receipt of a notice of initiation of the provisions of this chapter, the clerk of the court shall provide each party to the case a list containing the names of the same five (5) randomly selected evaluators. If there are more than two (2) parties to the litigation, the clerk will provide ten (10) names.

(4) In every case each party may submit requests for replacement list(s) to the clerk within three (3) days of receipt of a list of evaluators. Upon receipt of such a request, the clerk of the court shall provide each party to the case a new list containing an appropriate number of names of randomly selected evaluators.

(5) Within seven (7) days of receipt of the list, it shall be the duty of the party that filed the notice initiating proceedings under this chapter to initiate contact with the other party or parties for the purpose of selecting an evaluator. Unless the parties agree on a particular evaluator or a different method of selection, selection of the evaluator will be by alternating strikes. The initiating party shall strike an evaluator's name, the opposing party shall then strike an evaluator's name with the parties alternating until only one (1) name is left. If there are more than two (2) parties, the strikes shall

be made in the order the parties' names appear on the case caption commencing with the initiating party. The initiating party shall file notice of the selected evaluator within ten (10) days of the receipt of the list.

(6) If there is any dispute or failure to cooperate with the selection procedures contained in this section, any party may file a motion with the court for assistance in selection of an evaluator. No hearing shall be required and the court shall rule on such motion expeditiously and take whatever steps are necessary to obtain the prompt selection of an evaluator. If the court finds that a party has requested a replacement list of evaluators unreasonably or determines it is otherwise appropriate, the court may appoint a sitting or retired judge or a private lawyer from the list of approved evaluators to serve as evaluator for the case.

(7) Upon application by any party made no sooner than fourteen (14) days after the filing of the notice of request for civil evaluation, the clerk shall assign by random lot any of the individuals identified on the list as the evaluator if no notice of selection or motion for assistance has been filed.

(8) Nothing shall preclude the parties stipulating to the appointment of any individual who agrees to serve as their evaluator under this statute. If the parties stipulate to the appointment of an evaluator different from one on the list provided by the clerk, they shall file a joint statement to that effect with the court.

(9) To the extent it deems necessary, the supreme court may prescribe rules to reduce the costs of evaluation under this chapter. It may also prescribe forms to be used in the evaluation process, and other rules, standards or procedures it deems appropriate to effectuate the purposes of this chapter.

(10) The supreme court may exempt all cases filed in the courts of any county from the operation of this chapter if, following application made by the administrative judge of the judicial district which includes that county, the supreme court determines the county does not have sufficient judicial or other resources to implement and effectuate the purposes of this chapter or for other good cause shown.

History.

I.C., § 7-1504, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 2, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1505. Qualifications, appointment and compensation of evaluators. — (1) Any individual desiring to be on a list of private civil litigation evaluators under this chapter shall submit a request to the supreme court identifying each county in which the individual wishes to serve. The task of acting as an evaluator under this chapter shall be a service to the judiciary and the legal profession. The legislature encourages members of the bar to accept up to two (2) appointments under this chapter on a pro bono basis each year.

(2) To be listed as a private civil litigation evaluator, a person must currently be an active member of the Idaho state bar association and have had such membership for a minimum of seven (7) years or be a retired or senior judge. To the extent it deems them necessary, the supreme court may prescribe by rule additional qualifications for civil litigation evaluators in some or all cases with the purpose of providing the largest pool of individuals with the knowledge and experience to fairly determine claims under this chapter at minimal or no cost to litigants.

(3) Upon appointment in each case, the evaluator must sign an oath to fulfill the duties of the office, including the impartial, unbiased and timely discharge of those duties. He must also affirmatively state that he has no conflict of interest or, in the alternative, make a written disclosure of any conflict of interest to the parties, which they may waive by filing a written consent with the evaluator. Challenges to the service of an evaluator shall be made by motion to the trial court and shall be heard expeditiously. Evaluators may decline an appointment. The trial court may also release evaluators from an appointment for good cause. If an evaluator declines or is released from service, a new list shall be requested from the clerk for selection of an evaluator.

(4) Evaluators shall submit their rates of hourly compensation, if any, to the supreme court when submitting their request to be on the list of civil litigation evaluators. The clerk shall include the rate of hourly compensation, if any, for each evaluator in the list of names submitted to the parties. The parties shall each pay an equal portion of a private evaluator's fee if any is charged as well as an equal portion of any actual

costs incurred by the private evaluator. Individuals who wish to serve as private civil litigation evaluators under this chapter other than on a pro bono basis shall agree to serve as an evaluator in exchange for a fee not to exceed one thousand dollars ($1,000) unless the parties agree otherwise. Provided however, sitting or senior judges appointed as evaluators by the supreme court or administrative judge as part of their judicial service shall not be compensated by the parties. Retired or senior judges selected by the parties from the roster of private civil litigation evaluators maintained by the supreme court through the administrative director of the courts shall be compensated by the parties in accordance with this subsection.

History.

I.C., § 7-1505, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 3, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1506. Evaluator authority — Procedures relating to service, filing and computation of time. — (1) Solely for the purpose of an evaluation, an evaluator has the authority to:

(a) Decide procedural issues and deadlines relating to the conduct of the evaluation, including discovery disputes, arising before or during the evaluation process except issues relating to the qualification of the evaluator, which shall be decided by the trial court.

(b) Invite, with reasonable notice, the parties to submit preevaluation briefs;

(c) Examine any site or object relevant to the case;

(d) Administer oaths and affirmations to witnesses for the purposes of the evaluation;

(e) Rule on the admissibility of evidence;

(f) Determine the facts, decide the law, and issue a written evaluation decision; and

(g) Take such other acts as are necessary to accomplish the object of a fair, swift, and cost-effective determination of the case.

(2) An evaluator shall not decide motions to dismiss, motions to add or change parties in the case, or motions for summary judgment. Any such motion shall be presented to the trial court for determination.

(3) After the case is assigned to the evaluator, service shall be made consistent with rule 5 of the Idaho rules of civil procedure, except that documents used in the evaluation shall be filed with the evaluator instead of the court.

(4) Time shall be computed pursuant to the Idaho rules of civil procedure.

(5) Except for the authority expressly given to an evaluator by this chapter, all issues shall be determined by the court.

History.

I.C., § 7-1506, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 4, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1507. Discovery. — (1) Unless the evaluator orders otherwise:

(a) A defending party may demand in writing a statement from each claimant setting forth separately the amounts of any special, general or other damages sought in the evaluation. Such statement shall be served on all parties no later than twenty-one (21) days after receipt of the demand;

(b) A party may take the deposition of another party pursuant to the Idaho rules of civil procedure;

(c) If the physical or mental condition of a claimant is at issue, the defending parties may obtain the relevant medical reports of the claimant and one (1) defendant's medical examination of the claimant. The evaluator shall decide any limitations to be placed on the time, place, manner, conditions or scope of the examination if requested. A claimant shall have an absolute right to a copy of any document relating to the claimant which is created by the examiner or the examiner's employees or agents during or after the examination. Such materials shall be provided to the claimant within fourteen (14) days of the date of the examination and no later than twenty-one (21) days prior to the evaluation hearing date. Failure to timely provide the medical examiner's materials shall be a basis for vacating and rescheduling the hearing or for excluding the evidence in the discretion of the evaluator;

(d) The parties may submit requests for admission to one another pursuant to the Idaho rules of civil procedure.

(2) The conclusions and foundations therefore of any expert opinion testimony that a party intends to offer at the evaluation shall be submitted in writing to the opposing party no later than twenty-one (21) days prior to the evaluation. Medical records are deemed to fulfill the requirements of this subsection. If the opposing party concludes that it needs to take the expert's deposition and the parties cannot reach agreement to do so, the written report shall be submitted to the evaluator who, after hearing the opposing party's reasons for requesting the deposition, may order it to go forward. The evaluator's determination that such discovery will occur shall be based

on whether it is necessary to obtain a fair determination of the case. If a party wishes to offer the live testimony of any expert witness at the evaluation, notice of the intent to do so must be given to the other parties no later than twenty-one (21) days prior to the evaluation and the opposing parties shall have the right to depose the expert before the evaluation is conducted.

(3) No additional discovery shall be due or obtained for the purpose of the evaluation unless the parties stipulate thereto or the evaluator has ordered otherwise based on the evaluator's determination that such discovery is necessary to obtain a fair, swift and cost-effective determination of the case.

(4) Costs of all depositions, including fees for expert testimony, and medical examinations shall be paid by the party requesting the examination or testimony.

History.

I.C., § 7-1507, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 5, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1508. Prehearing and hearing procedures. — (1) The evaluator shall set the time and place of the evaluation hearing and shall give reasonable notice of the hearing to the parties. The parties may agree to hold the hearing by telephone. Except by stipulation among the parties and the evaluator, or for good cause shown, the hearing shall be scheduled to take place no sooner than twenty-eight (28) days, nor later than seventy (70) days, from the date of the assignment of the case to the evaluator. If a case will be heard later than seventy (70) days from the date of assignment, the evaluator shall file a notice with the trial court providing reasons for the delay and informing the court of the date of the hearing.

(2) Subject to the evaluator's discretion, no party shall be allowed more than three (3) hours for presentation of its case at an evaluation hearing.

(3) Counsel for the parties and the evaluator may issue subpoenas for the hearing in the manner provided in the Idaho rules of civil procedure.

(4) Unless otherwise agreed by the parties, at least seven (7) days prior to the date of the evaluation, each party shall file with the evaluator and serve upon all other parties a prehearing statement containing a list of witnesses the party intends to call at the evaluation hearing and a list of exhibits and documentary evidence a party intends to utilize at the hearing. The document will identify whether the testimony shall be live, presented in a sworn writing, or taken by telephone. All written and other tangible evidence identified shall be made available for the opposing party's inspection and copying at least seven (7) days prior to the hearing date. The evaluator may exclude any evidence not provided in compliance with this section.

(5) The evaluator shall control the mode and order of proof with the objectives of making the presentation of evidence effective for the ascertainment of facts, avoiding the needless consumption of time, protecting witnesses from harassment and undue embarrassment, and ensuring the fair, swift, and cost-effective determination of the case. Witnesses shall testify under oath administered by the evaluator with the full penalty of law to apply to violation of that oath. The evaluator may allow testimony by telephone or other nontraditional means. The evaluator

may question any witness. A party has the right to cross-examine any other party and any witness called by another party.

(6) A stenographic or electronic recording may be made at the request and at the expense of any party.

(7) Proceedings shall be under the control of the evaluator and as informal as practicable. The extent to which the formal rules of evidence will be applied shall rest in the discretion of the evaluator. To the extent determined applicable, the evaluator shall construe those rules liberally in order to effectuate a fair, swift and cost-efficient procedure. Expert opinion testimony shall only be allowed if the conclusions and foundations therefore [therefor] were appropriately disclosed and, if offered live, subjected to the opportunity for deposition pursuant to section 7-1507(2), Idaho Code, and otherwise admissible under the Idaho rules of evidence.

(8) To effectuate the fair, swift and cost-efficient nature of the evaluation, the following documents shall be presumed admissible and may be provided to the evaluator prior to the hearing, provided the documents are disclosed in the prehearing statement and, where relevant, the name, address and telephone number of the author of the document is contained in the document or set forth in the prehearing statement:

(a) Any written contract between the parties;

(b) A copy of any billing statement or invoice prepared in the normal course of business;

(c) Copies of any correspondence between the parties except documents inadmissible under rule 408 of the Idaho rules of evidence;

(d) Any document that would be admissible under rule 803(6) of the Idaho rules of evidence;

(e) A bill, report, chart, or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead, or billhead or otherwise clearly identifiable as part of the provider's professional record;

(f) A bill for drugs, medical appliances or other related expenses on letterhead, or billhead or otherwise clearly identifiable as part of a provider's professional record;

(g) A bill for, or estimate of, property damage or loss on a letterhead or billhead. In the case of an estimate, the offering party shall notify the adverse party no later than, as part of the prehearing statement, whether the property was repaired, in full or in part and provide the actual bill showing the cost of repairs;

(h) A police, weather, or wage loss report or standard life expectancy table to the extent it is relevant without need for authentication;

(i) A photograph, videotape, x-ray, drawing, map, blueprint, or similar evidence to the extent it is relevant without the need for authentication;

(j) The written statement of any witness made as part of a police investigation;

(k) The written statement of any witness, including a written report of any expert witness that contains a statement of opinion based on proper qualifications which the witness would be allowed to express if testifying in person;

(*l*) A document not specifically covered by the foregoing but having equivalent circumstantial guarantees of trustworthiness, the admission of which would help in the swift, fair and cost-effective resolution of the dispute or otherwise serve the interests of justice.

(9) The admission of a document under subsection (8) of this section does not, in any manner, restrict argument or proof relating to the weight of the evidence admitted, nor does it limit the evaluator's discretion to determine the weight of the evidence after hearing all evidence and the arguments of the parties.

(10) The evaluation hearing may proceed, and a decision may issue, in the absence of any party who, after due notice, fails to participate or to obtain a continuance. Continuances shall only be granted for good cause and for the shortest practicable time. If a party is absent, the evaluator may permit any party present to submit evidence supporting such present party's position in the case. In a case involving more than one (1) defendant, the absence of a defendant shall not preclude the evaluator from assessing as part of the award, damages against the defendant or defendants who are absent. The evaluator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award. A

party who fails to participate in the hearing or prehearing process without good cause waives the right to a trial de novo. If it is shown to the trial court by clear and convincing evidence that a party or its counsel has not acted in good faith during the evaluation, the trial court may impose any appropriate sanction against such party or its counsel.

History.

I.C., § 7-1508, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 6, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

The bracketed insertion in subsection (7) was added by the compiler to supply the intended word.

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1509. Evaluation decision — Trial de novo — Miscellaneous. — (1) Within fourteen (14) days following the evaluation, the evaluator shall issue a written, signed decision. The evaluator shall determine all issues raised by the pleadings, including a determination of any damages. The evaluator shall apply the applicable law as it exists; however, neither findings of fact nor conclusions of law shall be required. The decision shall be served on the parties. The evaluator shall file a notice of issuance of the evaluator's decision with the clerk of the court, together with proof of service of the notice and the decision on the parties. The decision shall not be filed with the clerk of the court. The evaluator's decision shall not exceed thirty-five thousand dollars ($35,000) in total damages to a party. The evaluator's decision shall not include exemplary or punitive damages. An evaluator may, in addition, award costs and attorney's fees under the terms of an applicable contract. All other costs and attorney's fees to which a party is entitled by statute or court rule shall be awarded by the court.

(2) Within twenty-one (21) days after the notice of issuance of the evaluator's decision has been filed with the clerk of the court, any party may file with the clerk a request for a trial de novo in the district court on all issues of law and fact.

(3) The trial de novo shall proceed as if the evaluation had not occurred. No reference to the evaluation or to the amount of the evaluation decision shall be made to the trial court or the jury during any part of the trial de novo. Discovery taken and recorded statements made during the evaluation process may be used at the trial de novo as provided in the Idaho rules of civil procedure and the Idaho rules of evidence; however, no reference shall be made to the fact that any statement was made in an evaluation proceeding. Any dollar amount sought, demanded or awarded during the evaluation, including the parties' agreement that for the purposes of the evaluation the claim is limited to thirty-five thousand dollars ($35,000), shall be treated as an offer of compromise pursuant to the Idaho rules of evidence and shall not be admissible at trial. Any examination made pursuant to the provisions of section 7-1507(1)(c), Idaho Code, shall be subject to rule 35 of the Idaho rules of civil procedure. Any violation of the

provisions of this subsection by a party or its attorney shall be subject to appropriate sanctions by the trial court.

(4) The relief sought at trial shall not be limited by the evaluation; provided however, that judgment for damages of more than thirty-five thousand dollars ($35,000), exclusive of costs and fees, may not be entered for a party who has agreed that its claim does not exceed thirty-five thousand dollars ($35,000) for the purposes of initiating alternative dispute resolution under this chapter and shall be reduced by the court unless the claimant establishes the applicability of the factors of rule 60 of the Idaho rules of civil procedure. An evaluator may not be called as a witness at the trial de novo.

(5) The trial court shall assess costs, reasonable attorney's fees, and the entire amount of the evaluator's fee against a party who requests a trial de novo and fails to improve its position at the trial de novo by at least fifteen percent (15%). For purposes of this subsection, "costs and reasonable attorney's fees" means all attorney's fees and costs as provided for by statute or court rule incurred after the filing of a request for a trial de novo. In addition, the court shall award all other expert witness fees and expenses in excess of those permitted by statute or rule if the court finds that they were reasonably incurred.

(6) Within twenty-one (21) days following the filing of the request for trial de novo, a party may serve upon the other party(ies) a written offer of compromise. If an offer of compromise is not accepted by the other party(ies) within fourteen (14) days after service thereof, the amount used for determining whether the party requesting the trial de novo has improved its position shall be the amount of the offer of compromise. Neither the evaluator's decision nor the offer of compromise shall be submitted to the trial court until the verdict or judgment has been rendered in the trial de novo.

(7) The trial court may assess some or all costs and reasonable attorney's fees against a party who withdraws its request for a trial de novo where the withdrawal is not in conjunction with the acceptance of an offer of compromise.

(8) If no request for trial de novo has been filed at the expiration of twenty-one (21) days following the filing of the evaluator's notice of

decision, a judgment may be presented to the court by any party accompanied by a copy of the evaluator's decision. If the judgment is in conformity with the evaluator's decision it shall be entered and shall have the same force and effect as any other judgment in a civil action but shall not be subject to appellate review and may only be set aside pursuant to the provisions of rule 60 of the Idaho rules of civil procedure. An accepted offer of compromise may also be presented to the court to be converted to a judgment.

(9) Except as provided in subsection (5) of this section, the provisions of this chapter do not affect or preclude the application of any other statute or rule regarding fees or costs including, but not limited to, those in title 7 or 12, Idaho Code, section 41-1839, Idaho Code, or the Idaho rules of civil procedure. Awards of damages and of attorney's fees and costs, when made to opposing parties, shall be set off against one another and judgment shall be entered for the net amount to the party(ies) entitled thereto.

(10) An evaluator may obtain a judgment for his fees and costs in the pending litigation against any party that refuses to pay its share. Judgment shall be obtained by motion to the trial court which shall only be granted after the party failing to pay has had the opportunity to be heard and object.

History.

I.C., § 7-1509, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 7, p. 102; am. 2019, ch. 187, § 1, p. 594.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 187, substituted "thirty-five thousand ($35,000)" for "twenty-five thousand ($25,000)" in the seventh sentence of subsection (1), in the fourth sentence of subsection (3) and twice in subsection (4).

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after

January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

CASE NOTES

Attorney's Fees.

District court was within its discretion to award attorney fees in an amount equivalent to the prevailing party's contingent fee arrangement. Lake v. Purnell, 143 Idaho 818, 153 P.3d 1164 (2007).

§ 7-1510. Right to trial. — The intent of this chapter is to maintain the right to a court or jury trial and the provisions of this statute shall not be construed to impair that right.

History.

I.C., § 7-1510, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 8, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1511. Severability. — If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

History.

I.C., § 7-1511, as added by 2002, ch. 137, § 1, p. 380.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

§ 7-1512. Statistical records — Compilation of evaluator list. — (1) The supreme court shall keep statistical records of the number of requests for evaluation filed pursuant to the provisions of this chapter, the number of requests for trial de novo hereunder, and the number of instances in which a party improves its position by at least fifteen percent (15%) at trial.

(2) Commencing no later than July 1, 2002, the supreme court shall begin compiling the names of individuals desiring to serve as civil litigation evaluators in each judicial district.

History.

I.C., § 7-1512, as added by 2002, ch. 137, § 1, p. 380; am. 2003, ch. 29, § 9, p. 102.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2002, ch. 137, as amended by section 1 of S.L. 2006, ch. 141, provides: "This act shall be in full force and effect on and after January 1, 2003, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Section 10 of S.L. 2003, ch. 29, as amended by S.L. 2010, ch. 184, § 1 (retroactively effective on January 1, 2003) provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003."

Licensed to the People of Idaho, Public Resource

Title 8
PROVISIONAL REMEDIES IN CIVIL ACTIONS

Chapter

Chapter 1. Arrest and Bail, §§ 8-101 — 8-127.
Chapter 2. Discharge of Persons Imprisoned on Civil Process, §§ 8-201 — 8-212.
Chapter 3. Claim and Delivery of Personal Property, §§ 8-301 — 8-312.
Chapter 4. Injunctions. [Repealed.]
Chapter 5. Attachments, §§ 8-501 — 8-540.
Chapter 6. Receivers, §§ 8-601 — 8-606.
Chapter 7. Deposit in Court, §§ 8-701 — 8-705.

Chapter 1
ARREST AND BAIL

Sec.

8-101. Arrest in civil action.

8-102. Grounds for arrest.

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8-123. Satisfaction of judgment from deposit — Refund.
8-124, 8-125. [Repealed.]
8-126. Vacation of order of arrest — Application for.
8-127. Vacation of order of arrest — Reduction of bail.

§ 8-101. Arrest in civil action. — No person can be arrested in a civil action except as prescribed in this Code.

History.

C.C.P. 1881, § 270; R.S., R.C., & C.L., § 4240; C.S., § 6729; I.C.A., § 6-101.

STATUTORY NOTES

Cross References.

Arrest of debtor in supplementary proceedings, § 11-502.

Arrest of witnesses, § 9-709.

Discharge of persons imprisoned on civil process, § 8-201 et seq.

Incarceration of sheriff on arrest by coroner or elisor, § 31-2220.

Witnesses privileged from arrest, § 9-1303.

Compiler's Notes.

The reference to "this Code" in this section is to the Code of Civil Procedure, a division of the Idaho Code, consisting of titles 1 through 13.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 71 et seq.

ALR. — What constitutes obstructing or resisting an officer, in the absence of actual force. 44 A.L.R.3d 1018.

Modern status of rules as to right to forcefully resist illegal arrest. 44 A.L.R.3d 1078.

Right to resist excessive force used in accomplishing lawful arrest. 77 A.L.R.3d 281.

§ 8-102. Grounds for arrest. — The defendant may be arrested as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon a contract express or implied where the defendant is about to depart from the state with intent to defraud his creditors, or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another.

2. In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office or in a professional employment, or for a wilful violation of duty.

3. In an action to recover the possession of personal property unjustly detained when the property, or any part thereof, has been concealed, removed or disposed of to prevent its being found or taken by the sheriff.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

History.

C.C.P. 1881, § 271; R.S., R.C., & C.L., § 4241; C.S., § 6730; I.C.A., § 6-102.

STATUTORY NOTES

Cross References.

Attachments and garnishments, § 8-501 et seq.

CASE NOTES

Cited State v. Cochrane, 51 Idaho 521, 6 P.2d 489 (1931).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 71 et seq.

§ 8-103. Order for arrest. — An order for the arrest of the defendant must be obtained from a judge of the court in which the action is pending.

History.

C.C.P. 1881, § 272; R.S., R.C., & C.L., § 4242; C.S., § 6731; I.C.A., § 6-103; am. 1969, ch. 125, § 1, p. 386.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 86 et seq.

§ 8-104. Affidavit for arrest. — The order may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 8-102[, Idaho Code]. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the court.

History.

C.C.P. 1881, § 273; R.S., R.C., & C.L., § 4243; C.S., § 6732; I.C.A., § 6-104.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 86 et seq.

§ 8-105. Undertaking required of plaintiff. — Before making the order the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least $500, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

History.

C.C.P. 1881, § 274; R.S., R.C., & C.L., § 4244; C.S., § 6733; I.C.A., § 6-105.

STATUTORY NOTES

Cross References.

Common form of undertaking, § 12-613.

Justification of sureties, § 12-614; Idaho Civil Procedure Rule 66(a).

State, county or city need not give bond, § 12-615.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 91.

§ 8-106. Time of making and contents of order. — The order may be made at the time of the issuing of the summons, or at any time afterward before judgment. It must require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

History.

C.C.P. 1881, § 275; R.S., R.C., & C.L., § 4245; C.S., § 6734; I.C.A., § 6-106.

CASE NOTES

Authority of Sheriff.

County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners' statutory duties under §§ 20-622 and 31-1503 do not encompass control of bail, which is a matter within the sheriff's authority under this section and §§ 19-817 and 31-2202(6). Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 86 et seq.

§ 8-107. Arrest — How made. — The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

History.

C.C.P. 1881, § 276; R.S., R.C., & C.L., § 4246; C.S., § 6735; I.C.A., § 6-107.

STATUTORY NOTES

Cross References.

Officer must exhibit process on demand, § 31-2214.

Service of process by elisor, §§ 31-2218 to 31-2221.

Sheriff must indorse time of reception on process, § 31-2202.

Sheriff's fee for executing order of arrest, § 31-3203.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 92.

§ 8-108. Arrest — Custody of defendant. — The sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law.

History.

C.C.P. 1881, § 277; R.S., R.C., & C.L., § 4247; C.S., § 6736; I.C.A., § 6-108.

STATUTORY NOTES

Cross References.

Arrest and custody of sheriff, § 31-2220.

Board money to be advanced in case of commitment on execution, § 8-212.

Sheriff is justified by, and must execute, process regular on its face, notwithstanding defects in the proceedings, § 31-2213.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 53 et seq.

C.J.S. — 6A C.J.S., Arrest, § 93.

§ 8-109. Right to bail. — The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or depositing the amount mentioned in the order of arrest.

History.

C.C.P. 1881, § 278; R.S., R.C., & C.L., § 4248; C.S., § 6737; I.C.A., § 6-109.

RESEARCH REFERENCES

ALR. — Propriety of applying cash bail to payment of fine. 42 A.L.R.5th 547.

Funds deposited in court in lieu of bail as subject of garnishment. 1 A.L.R.3d 936.

Validity, construction, and application of statutes regulating bail bond business. 13 A.L.R.3d 618.

§ 8-110. Bail — How given. — The defendant may give bail by causing a written undertaking to be executed by two (2) or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest that the defendant will at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

History.

C.C.P. 1881, § 279; R.S., R.C., & C.L., § 4249; C.S., § 6738; I.C.A., § 6-110.

STATUTORY NOTES

Cross References.

Surety company bonds authorized, § 41-2607.

Idaho Code § 8-111

§ 8-111. Surrender of defendant by bail. — At any time before judgment or within ten (10) days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

History.

C.C.P. 1881, § 280; R.S., R.C., & C.L., § 4250; C.S., § 6739; I.C.A., § 6-111.

§ 8-112. Surrender — How made — Exoneration or charge of bail. — For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest, or, by a written authority indorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery or surrender take place before the expiration of ten (10) days after judgment; but if such arrest, delivery or surrender be not made within ten (10) days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten (10) days thereafter.

History.

C.C.P. 1881, § 281; R.S., R.C., & C.L., § 4251; C.S., § 6740; I.C.A., § 6-112.

§ 8-113. Proceedings against bail. — If the bail neglect or refuse to pay the judgment within ten (10) days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

History.

C.C.P. 1881, § 282; R.S., R.C., & C.L., § 4252; C.S., § 6741; I.C.A., § 6-113.

§ 8-114. Exoneration of bail. — The bail are exonerated by the death of the defendant or his imprisonment in the state prison, or by his legal discharge from the obligation to render himself amenable to the process.

History.

C.C.P. 1881, § 283; R.S., R.C., & C.L., § 4253; C.S., § 6742; I.C.A., § 6-114.

§ 8-115. Return by sheriff of order and bail bond — Notice by plaintiff — Filing of bond. — Within the time limited for that purpose, the sheriff must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff within ten (10) days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he is deemed to have accepted them, and the sheriff is exonerated from liability. If no notice be served within ten (10) days, the original undertaking must be filed with the clerk of the court.

History.

C.C.P. 1881, § 284; R.S., R.C., & C.L., § 4254; C.S., § 6743; I.C.A., § 6-115.

STATUTORY NOTES

Cross References.

Penalty for failure to return, § 31-2205.

Return of process after expiration of term of office, § 31-2225.

Return of process is prima facie evidence of facts, § 31-2204.

§ 8-116. Justification of bail — Notice — New undertaking. — Within five (5) days after the receipt of notice, the sheriff or defendant may give the plaintiff or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupation of the latter), before the judge of the court, at a specified time and place; the time to be not less than five (5) nor more than ten (10) days thereafter, except by consent of parties. In case other bail be given there must be a new undertaking.

History.

C.C.P. 1881, § 285; R.S., R.C., & C.L., § 4225; C.S., § 6744; I.C.A., § 6-116; am. 1969, ch. 125, § 2, p. 386.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 6 of S.L. 1969, ch. 125 provided that the act be effective on January 11, 1971.

§ 8-117. Qualifications of bail. — The qualifications of bail are as follows:

1. Each of them must be resident and householder or freeholder within the state.

2. Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his liabilities, exclusive of property exempt from execution; but the judge, on justification, may allow more than two (2) sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two (2) sufficient bail.

History.

C.C.P. 1881, § 286; R.S., R.C., & C.L., § 4256; C.S., § 6745; I.C.A., § 6-117.

§ 8-118. Justification — How made. — For the purpose of justification each of the bail must attend before the judge at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his insufficiency, in such manner as the judge in his discretion may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

History.

C.C.P. 1881, § 287; R.S., R.C., & C.L., § 4257; C.S., § 6746; I.C.A., § 6-118.

STATUTORY NOTES

Cross References.

Sufficiency of justification of sureties, § 12-614, Idaho R. Civ. P. 6(b).

§ 8-119. Allowance of bail. — If the judge find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff is thereupon exonerated from liability.

History.

C.C.P. 1881, § 288; R.S., R.C., & C.L., § 4258; C.S., § 6747; I.C.A., § 6-119.

§ 8-120. Deposit with sheriff. — The defendant, or a person on behalf of the defendant, may at the time of the defendant's arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant, or a person on behalf of the defendant, may deposit such amount instead of giving bail. In either case the sheriff must give the person who made the deposit on behalf of the defendant, a certificate of the deposit made, and the defendant must be discharged from custody.

History.

C.C.P. 1881, § 289; R.S., R.C., & C.L., § 4259; C.S., § 6748; I.C.A., § 6-120; am. 1997, ch. 106, § 1, p. 250.

§ 8-121. Deposit — Payment into court by sheriff. — The sheriff must, immediately after the deposit, pay the same into court and take from the clerk receiving the same, two (2) certificates of such payment, the one of which he shall deliver to the person who made the deposit on behalf of the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited as in other cases of delinquency.

History.

C.C.P. 1881, § 290; R.S., R.C., & C.L., § 4260; C.S., § 6749; I.C.A., § 6-121; am. 1997, ch. 106, § 2, p. 250.

STATUTORY NOTES

Cross References.

Suits on official bonds by persons injured, § 59-815.

§ 8-122. Substituting bail for deposit. — If money is deposited, as provided in the last two (2) sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the person who made the deposit.

History.

C.C.P. 1881, § 291; R.S., R.C., & C.L., § 4261; C.S., § 6750; I.C.A., § 6-122; am. 1997, ch. 106, § 3, p. 250.

§ 8-123. Satisfaction of judgment from deposit — Refund. — Where money has been deposited, if it remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the person who made the deposit. If the judgment is in favor of the defendant, the clerk must, under the direction of the court refund to the person who made the deposit the whole sum deposited and remaining unapplied.

History.

C.C.P. 1881, § 292; R.S., R.C., & C.L., § 4262; C.S., § 6751; I.C.A., § 6-123; am. 1997, ch. 106, § 4, p. 250.

§ 8-124. Escape — Liability of sheriff. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 293; R.S., R.C., & C.L., § 4263; C.S., § 6752; I.C.A., § 6-124, was repealed by S.L. 2004, ch. 114, § 1.

§ 8-125. Escape — Judgment against sheriff. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 294; R.S., R.C., & C.L., § 4264; C.S., § 6753; I.C.A., § 6-125, was repealed by S.L. 2004, ch. 114, § 1.

§ 8-126. Vacation of order of arrest — Application for. — A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the judge of the court in which the action is pending, or to the court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

History.

C.C.P. 1881, § 295; R.S., R.C., & C.L., § 4265; C.S., § 6754; I.C.A., § 6-126.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 94.

§ 8-127. Vacation of order of arrest — Reduction of bail. — If, upon application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

History.

C.C.P. 1881, § 296; R.S., R.C., & C.L., § 4266; C.S., § 6755; I.C.A., § 6-127.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 94.

Idaho Code Ch. 2

Chapter 2
DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS

Sec.

8-201. Right to discharge.

8-202. Notice of application.

8-203. Service of notice.

8-204. Examination of debtor.

8-205. Interrogatories may be propounded.

8-206. Oath prior to discharge.

8-207. Order of discharge.

8-208. Reapplication for discharge.

8-209. Discharge is final.

8-210. Judgment remains in force.

8-211. Discharge by order of plaintiff.

8-212. Advance of board money.

§ 8-201. Right to discharge. — Any person confined in jail on an execution issued on a judgment rendered in a civil action must be discharged therefrom upon the conditions in this chapter specified.

History.

C.C.P. 1881, § 783; R.S., R.C., & C.L., § 5075; C.S., § 7308; I.C.A., § 6-201.

STATUTORY NOTES

Cross References.

Arrest in civil actions, § 8-101 et seq.

CASE NOTES

Applicability.

Mandamus.

Applicability.

This chapter is applicable to an application for discharge by one confined in jail on contempt proceedings for noncompliance with an order for the payment of alimony. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

Mandamus.

Writ of mandamus may issue in proper case to compel hearing on such cases, but petitioner must have clear legal right to compel action. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

Allegation as to condition of petitioner's health held not material on petition for writ of mandate. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96 et seq.

§ 8-202. Notice of application. — Such person must cause a notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the judge of the district court of the county in which such person may be confined, or, in case of his absence or inability to act, to a magistrate of the county in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment.

History.

C.C.P. 1881, § 784; R.S., R.C., & C.L., § 5076; C.S., § 7309; I.C.A., § 6-602; am. 1969, ch. 125, § 3, p. 386.

STATUTORY NOTES

Effective Dates.

Section 6 of S.L. 1969, ch. 125 provided that the act be effective on January 11, 1971.

CASE NOTES

Time for Application.

It appearing from § 8-208 that party, to make second application for discharge, must wait thirty (30) days, then, by inference, he must wait that length of time to make first application. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96 et seq.

§ 8-203. Service of notice. — Such notice must be served upon the plaintiff, his agent or attorney, one (1) day at least before the hearing of the application.

History.

C.C.P. 1881, § 785; R.S., R.C., & C.L., § 5077; C.S., § 7310; I.C.A., § 6-203.

CASE NOTES

Requirements of Application.

Application for discharge must allege giving of proper notice of time and place of hearing to parties entitled thereto. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

§ 8-204. Examination of debtor. — At the time and place specified in the notice, such person must be taken before such judge, who must examine him under oath concerning his estate, and property, and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, or any part thereof, and such judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

History.

C.C.P. 1881, § 786; R.S., R.C., & C.L., § 5078; C.S., § 7311; I.C.A., § 6-204.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

§ 8-205. Interrogatories may be propounded. — The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

History.

C.C.P. 1881, § 787; R.S., R.C., & C.L., § 5079; C.S., § 7312; I.C.A., § 6-205.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

§ 8-206. Oath prior to discharge. — If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to wit: "I, ..., do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars ($50.00), except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay or defraud my creditors, so help me God."

History.

C.C.P. 1881, § 788; R.S., R.C., & C.L., § 5080; C.S., § 7313; I.C.A., § 6-206.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

§ 8-207. Order of discharge. — After administering the oath the judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

History.

C.C.P. 1881, § 789; R.S., R.C., & C.L., § 5081; C.S., § 7314; I.C.A., § 6-207.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

ALR. — Posttraumatic Stress Disorder (PTSD) as Defense to Murder, Assault, or other Violent Crime. 4 A.L.R.7th 5.

§ 8-208. Reapplication for discharge. — If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding thirty (30) days, in the same manner as above provided, and the same proceedings must thereupon be had.

History.

C.C.P. 1881, § 790; R.S., R.C., & C.L., § 5082; C.S., § 7315; I.C.A., § 6-208.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

CASE NOTES

Time for Application.

It appearing from this section that party, to make second application for discharge, must wait thirty (30) days, then, by inference, he must wait that length of time to make first application. Brooks v. Edgington, 40 Idaho 432, 233 P. 514 (1925).

§ 8-209. Discharge is final. — The prisoner after being so discharged is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having wilfully sworn falsely upon his examination before the judge, or in taking the oath before prescribed.

History.

C.C.P. 1881, § 791; R.S., R.C., & C.L., § 5083; C.S., § 7316; I.C.A., § 6-209.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 96.

§ 8-210. Judgment remains in force. — The judgment against any prisoner who is discharged remains in full force against any estate which may then, or at any time afterward during the life of the judgment, belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.

History.

C.C.P. 1881, § 792; R.S., R.C., & C.L., § 5084; C.S., § 7317; I.C.A., § 6-210.

§ 8-211. Discharge by order of plaintiff. — The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

History.

C.C.P. 1881, § 793; R.S., R.C., & C.L., § 5085; C.S., § 7318; I.C.A., § 6-211.

§ 8-212. Advance of board money. — Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney, must advance to the jailer on such commitment, sufficient money for the board of the prisoner, at the rate provided by law, for one (1) week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

History.

C.C.P. 1881, § 794; R.S., R.C., & C.L., § 5086; C.S., § 7319; I.C.A., § 6-212.

Idaho Code Ch. 3

Chapter 3
CLAIM AND DELIVERY OF PERSONAL PROPERTY

Sec.

8-301. Delivery of personal property may be claimed.

8-302. Affidavit of claim — Show cause order — Writ of possession.

8-303. Plaintiff's undertaking.

8-304. Contents of writ.

8-305. Seizure by sheriff — Service of writ.

8-306. Defendant's undertaking — Return of property.

8-307. Qualifications of sureties — Protests.

8-308. Duties of sheriff.

8-309. Third party claims.

8-310. Return of writ.

8-311. Orders to protect possession.

8-312. Early settings.

§ 8-301. Delivery of personal property may be claimed. — The plaintiff in an action to recover the possession of personal property may, at the time of issuance of summons, or at any time before trial, claim the delivery of such property to him as provided in this chapter.

History.

I.C., § 8-301, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Cross References.

Costs, Idaho R. Civ. P. 54(d)(1) to Rule (d)(7).

Judgment, Idaho R. Civ. P. 58(a).

Prior Laws.

Former §§ 8-301 to 8-312, which comprised C.C.P. 1881, §§ 297 — 308; R.S., R.C., & C.L., §§ 4271 — 4282; C.S., §§ 6756 — 6767; I.C.A., §§ 6-301 — 6-312; am. 1969, ch. 125, § 4, p. 386, was repealed by S.L. 1973, ch. 118, § 1, p. 219.

CASE NOTES

Attorney fees.

Constitutionality.

Attorney Fees.

Plaintiff's action by claim and delivery under this chapter for merchandise taken without paying by the defendant was an action grounded in contract; thus, plaintiff could petition for, and receive, costs and attorneys' fees under § 12-120. Building Concepts, Ltd. v. Pickering, 114 Idaho 640, 759 P.2d 931 (Ct. App. 1988).

Constitutionality.

Since the new claim and delivery statute (this chapter) provides the debtor with a pre-seizure notice and hearing, it does not suffer from the constitutional defect of the former statute (former chapter 3 of title 8) which denied procedural due process. Massey-Ferguson Credit Corp. v. Peterson, 102 Idaho 111, 626 P.2d 767 (1980).

Decisions Under Prior Law

Alternative relief.

Attorney's fees.

Counterclaim.

Damages for detention.

Demand for immediate possession optional.

Insufficiency of evidence.

Presumptions from possession.

Property subject to action.

Replevin abolished.

Right of action.

Right to possession is issue.

Who may be sued.

Who may maintain action.

Alternative Relief.

Defendants were not in a position to assert that the court should have submitted alternative forms of verdict as regards which party was entitled to possession of tractor and its value, such being true because defendants were in possession of tractor at all times covered by supplemental complaint including the time of trial and plaintiff being satisfied with the alternative relief prayed for, that of judgment for balance due under contract of sale of the tractor, plaintiff not complaining as evidenced by their failure to appeal or cross-appeal. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Attorney's Fees.

Attorney fees are not a proper element of damages in a replevin action and are not recoverable in the statutory claim and delivery action. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Counterclaim.

Trial court erred in taking from the jury the issues of plaintiff's alleged conversion of the tractor and defendants' alleged damages attributable thereto, as defendants after conditional sales were entitled to have jury determine whether plaintiff suing in claim and delivery had wrongfully retaken the tractor before repurchasing the sales contract. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Damages for Detention.

In action by purchaser to recover possession of tractor taken by seller where purchaser did not file undertaking for delivery but only an undertaking for costs and defendant filed undertaking for redelivery but left tractor in possession of sheriff, the defendant who obtained judgment for possession was not entitled to any damages for detention. Michael v. Zehm, 74 Idaho 442, 263 P.2d 990 (1953).

Demand for Immediate Possession Optional.

It is left optional with the plaintiff whether he demand immediate possession of the personal property or not. Bates v. Capital State Bank, 21 Idaho 141, 121 P. 561 (1912).

Insufficiency of Evidence.

Evidence held insufficient to authorize the maintenance of an action of claim and delivery, since the notes in question were never delivered to the plaintiff county, nor to its treasurer, nor to any one else in behalf of the said county, nor any of its officers in trust or otherwise. Lewis County v. State Bank, 31 Idaho 244, 170 P. 98 (1918).

Presumptions from Possession.

Possession of personal property is indicia of ownership, and one in custody of personal property is presumed to be rightfully in possession thereof until the contrary appears. American Fruit Growers, Inc. v. Walmstad, 44 Idaho 786, 260 P. 168 (1927).

Property Subject to Action.

To support an action of claim and delivery, the property must be a personal chattel at the time of the taking and not something which has been turned into a chattel by reason of having been separated from the freehold by the defendant. Hull v. Hull, 1 Idaho 361 (1871).

An action of claim and delivery will not lie to recover gambling devices incapable of use for any purpose except in violation of the antigambling law. Mullen v. Moseley, 13 Idaho 457, 90 P. 986 (1907).

An action for recovery of mortgage bonds is an action for the recovery of possession of personal property. Bates v. Capital State Bank, 18 Idaho 429, 110 P. 277 (1910).

Replevin Abolished.

The common-law action of replevin is not in force in this state, and the provisions of law regarding claim and delivery take its place. Bates v. Capital State Bank, 21 Idaho 141, 121 P. 561 (1912).

The claim and delivery statutes of this state have replaced the common law action of replevin. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Right of Action.

In an action of claim and delivery, the right to immediate and exclusive possession of the property must exist at time the action is commenced. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Right to Possession Is Issue.

In an action of claim and delivery, the right to the possession of the property, and not the ownership thereof, is the main issue. Cunningham v. Stoner, 10 Idaho 549, 79 P. 228 (1904); American Fruit Growers, Inc. v. Walmstad, 44 Idaho 786, 260 P. 168 (1927).

Only question involved in action in claim and delivery is right to possession of article in controversy. Commercial Credit Co. v. Mizer, 50 Idaho 388, 296 P. 580 (1931).

Who May Be Sued.

Where the vendee of property under conditional sale is vested with the power to sell and deliver the proceeds to the vendor and sells, but fails to so deliver the proceeds, claim and delivery will not lie against the purchaser by the original vendor. Peasley v. Noble, 17 Idaho 686, 107 P. 402 (1910).

Under the provisions of the former "claim and delivery" statutes of this state, an action could be maintained against a person to recover the possession of personal property, although he did not have the possession of it at the time of the commencement of the action. Bates v. Capital State Bank, 21 Idaho 141, 121 P. 561 (1912).

Who May Maintain Action.

Where a chattel mortgage contains a stipulation providing that upon the happening of certain contingencies therein named, the mortgagee may take possession of said property and sell and dispose of it for the best price obtainable by due process of law, upon the happening of such contingency the mortgagee may maintain an action of claim and delivery to recover possession of the mortgaged property from an officer claiming to hold the same under an execution, who refuses to deliver up the property upon demand of the mortgagee or to pay the mortgage debt. Blackfoot City Bank v. Clements, 39 Idaho 194, 226 P. 1079 (1924); Schleiff v. McDonald, 41 Idaho 50, 237 P. 1108 (1925).

An action of claim and delivery may be maintained by one having a qualified property in goods coupled with the right of possession. Blackfoot City Bank v. Clements, 39 Idaho 194, 226 P. 1079 (1924); Smith v. Washburn-Wilson Seed Co., 40 Idaho 191, 232 P. 574 (1925); Schleiff v. McDonald, 41 Idaho 50, 237 P. 1108 (1925).

The action of claim and delivery is essentially a possessory one and it should be brought in the name of the plaintiff, who is entitled to the possession, whether he is the holder of legal title or not; where the right of possession is separated from the legal title then the action must be maintained by the one lawfully entitled to the possession thereof. Smith v. Washburn-Wilson Seed Co., 40 Idaho 191, 232 P. 574 (1925).

A husband or wife could maintain an action against the other for separate property if they are justified in living apart, or it would seem that the husband can maintain an action against the wife for community property

where his right to the possession thereof during the pendency of the divorce action had not been determined. Benson v. District Court, 57 Idaho 85, 62 P.2d 108 (1936).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Replevin, §§ 3, 40.

C.J.S. — 77 C.J.S., Replevin, § 8 et seq.

§ 8-302. Affidavit of claim — Show cause order — Writ of possession. — (1) Where a delivery is claimed, the plaintiff, by verified complaint or by an affidavit made by plaintiff or by someone on his behalf, filed with the court, shall show:

(a) That the plaintiff is the owner of the property claimed or is entitled to the possession thereof, and the source of such title or right; and if plaintiff's interest in such property is based upon a written instrument, a copy thereof shall be attached;

(b) That the property is wrongfully detained by the defendant, the means by which the defendant came into possession thereof, and the cause of such detention according to his best knowledge, information and belief;

(c) A particular description of the property, a statement of its actual value, and a statement to his best knowledge, information, and belief concerning the location of the property and of the residence and business address, if any, of the defendant;

(d) That the property has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure.

(2) The court shall, without delay, examine the complaint and affidavit, and if it is satisfied that they meet the requirements of subsection (1) of this section, it shall issue an order directed to the defendant to show cause why the property should not be taken from the defendant and delivered to the plaintiff. Such order shall fix the date and time for the hearing thereof, which shall be no sooner than five (5) days from the issuance thereof, and shall direct the time within which service thereof shall be made upon the defendant. Such order shall inform the defendant that he may file affidavits on his behalf with the court and may appear and present testimony on his behalf at the time of such hearing, or that he may, at or prior to such hearing, file with the court a written undertaking to stay the delivery of the property, in accordance with the provisions of section 8-306, Idaho Code, and that, if he fails to appear, plaintiff will apply to the court for a writ of

possession without further notice to defendant. If the writ of possession has issued prior to the hearing, the defendant may apply to the court to have the hearing set at an earlier date. Such order shall fix the manner in which service thereof, together with copies of the complaint and affidavit, shall be made, which shall be by personal service, or in such manner as the judge may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the complaint and affidavit. The plaintiff shall cause proof of service to be filed with the court prior to the hearing.

(3) Upon examination of the complaint and affidavit and such other evidence or testimony as the judge may, thereupon, require, a writ of possession may be issued prior to hearing, if probable cause appears that any of the following exist:

(a) The defendant gained possession of the property by larceny, as defined by any section of chapter 46, title 18, Idaho Code;

(b) The property consists of one (1) or more negotiable instruments or credit cards;

(c) By reason of specific facts shown, the property is perishable, and will perish before any noticed hearing can be had, or is in immediate danger of destruction, serious harm, concealment, or removal from this state, or of sale to an innocent purchaser, and that the holder of such property threatens to destroy, harm, conceal, remove it from the state, or sell it to an innocent purchaser.

Where a writ of possession has been issued prior to hearing under the provisions of this section, the defendant or other person from whom possession of such property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause, and the court may, upon such application, shorten the time for such hearing, and direct that the matter shall be heard on not less than forty-eight (48) hours' notice to the plaintiff.

(4) Under any of the circumstances described in subsection (1) of this section, or in lieu of the immediate issuance of a writ of possession under any of the circumstances described in subsection (3) of this section, the judge may, in addition to the issuance of an order to show cause, issue such

temporary restraining orders, directed to the defendant, prohibiting such acts with respect to the property, as may appear to be necessary for the preservation of rights of the parties and the status of the property.

(5) Upon the hearing on the order to show cause, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property, pending final adjudication of the claims of the parties. If the court determines that the action is one in which a prejudgment writ of possession should issue, it shall direct the issuance of such writ.

History.

I.C., § 8-302, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-302 was repealed. See Prior Laws, § 8-301.

CASE NOTES

Constitutionality.

Since the new claim and delivery statute (this chapter) provides the debtor with a pre-seizure notice and hearing, it does not suffer from the constitutional defect of the former statute (former chapter 3 of title 8) which denied procedural due process. Massey-Ferguson Credit Corp. v. Peterson, 102 Idaho 111, 626 P.2d 767 (1980).

Decisions Under Prior Law

Allegation of Ownership.

In an action in replevin an averment "that on the sixth of May, 1896 (more than two years before the commencement of the suit) plaintiff was the owner of said property" is not sufficient averment that plaintiff, at the time of commencing his action, was the owner or in possession or entitled to possession of the property in question. Bingham County Agrl. Ass'n v. Rogers, 7 Idaho 63, 59 P. 931 (1900).

Title alone may or may not give rise to the right of immediate possession. Morrison v. Quality Produce, Inc., 92 Idaho 448, 444 P.2d 409 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Replevin, § 43 et seq.

C.J.S. — 77 C.J.S., Replevin, § 46 et seq.

§ 8-303. Plaintiff's undertaking. — A writ of possession shall not issue until plaintiff has filed with the court a written undertaking executed by two (2) or more sufficient sureties, to the effect that they are bound to the defendant in double the value of the property, as determined by the court, for the return of the property to the defendant, if return thereof be ordered, and for the payment to him of any sum as may from any cause be recovered against the plaintiff.

History.

I.C., § 8-303, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Cross References.

General form of undertaking, § 12-613.

Justification of sureties, § 12-614, Idaho R. Civ. P. 66(a).

Sheriff's fee for executing order for delivery of personal property, § 31-3203.

State, county or city need not give bond, § 12-615.

Statutory form of undertaking, § 12-613.

Prior Laws.

Former § 8-303 was repealed. See Prior Laws, § 8-301.

CASE NOTES

Cited Building Concepts, Ltd. v. Pickering, 114 Idaho 640, 759 P.2d 931 (Ct. App. 1988).

Decisions Under Prior Law

Breach of conditions.

Condition precedent to action.

Expense of bond.

Material conditions.

Pleading in action.

Purpose of undertaking.

Signature not necessary.

Breach of Conditions.

Condition in bond that plaintiff shall duly prosecute action is broken by dismissal of action without return of property. Hoebel v. Utah-Idaho Livestock Loan Co., 39 Idaho 294, 227 P. 1048 (1924), following Keenan v. Washington Liquor Co., 8 Idaho 383, 69 P. 112 (1902).

Condition Precedent to Action.

Defendant in claim and delivery must first recover judgment against plaintiff before the defendant can proceed against the sureties on plaintiff's bond. Oakes v. American Sur. Co., 58 Idaho 482, 76 P.2d 932 (1938).

Expense of Bond.

Where defendants did not adduce any evidence as regards their alleged expense in obtaining the replevin bond necessary in their being repossessed of tractor allegedly wrongfully taken from them by sheriff, the trial court did not err in removing such issue from the jury, such recovery being precluded by their action. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

In an action for replevin or claim and delivery, the expense of a bond, in the amount required to effect redelivery of property to the person found to be wrongfully dispossessed thereof, is recoverable by such person. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Material Conditions.

Condition that plaintiff will prosecute his suit with effect and without delay is substantive and independent condition and as material as any other substantive condition. Hoebel v. Utah-Idaho Livestock Loan Co., 39 Idaho 294, 227 P. 1048 (1924).

Pleading in Action.

In action on claim and delivery bond given by surety company, it is not necessary to allege corporate existence of such company. Hoebel v. Utah-Idaho Livestock Loan Co., 39 Idaho 294, 227 P. 1048 (1924).

Purpose of Undertaking.

Undertaking is for the doing of three acts: (1) For prosecution of action. (2) For return of property if so adjudged. (3) For payment to defendant of such sums as may from any cause be recovered against plaintiff. Hoebel v. Utah-Idaho Livestock Loan Co., 39 Idaho 294, 227 P. 1048 (1924).

Signature Not Necessary.

Principal who gives undertaking is liable thereon for any breach of its conditions, although he has not signed it. Hoebel v. Utah-Idaho Livestock Loan Co., 39 Idaho 294, 227 P. 1048 (1924).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Replevin, § 44 et seq.

C.J.S. — 77 C.J.S., Replevin, § 54 et seq.

§ 8-304. Contents of writ. — (1) The writ of possession shall be directed to the sheriff within whose jurisdiction the property is located. It shall describe the specific property to be seized, and shall specify the location or locations where, as determined by the court from all the evidence, there is probable cause to believe the property or some part thereof will be found. It shall direct the sheriff to seize the same if it is found in the possession of the defendant or his agent and to retain it in his custody. There shall be attached to such writ a copy of the written undertaking filed by the plaintiff, and such writ shall inform the defendant that he has the right to except to the sureties upon such undertaking or to file a written undertaking for the redelivery of such property, as provided in section 8-306, Idaho Code.

(2) Upon probable cause shown by further affidavit made by the plaintiff or someone on his behalf, filed with the court, additional writs of possession may be issued by the court, without further notice, to direct any sheriff within whose jurisdiction the property may be located to search for the property at another location or locations and to seize the same, if found.

History.

I.C., § 8-304, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-304 was repealed. See Prior Laws, § 8-301.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Replevin, § 46 et seq.

C.J.S. — 77 C.J.S., Replevin, § 61 et seq.

§ 8-305. Seizure by sheriff — Service of writ. — The sheriff shall forthwith take the property, if it be in the possession of the defendant or his agent, and retain it in his custody, either by removing the property to a place of safekeeping or, upon good cause shown, by installing a keeper.

If the property or any part thereof is in a building or inclosure, the sheriff shall demand its delivery, announcing his identity, purpose, and the authority under which he acts. If it is not voluntarily delivered, he shall cause the building or inclosure to be broken open in such manner as he reasonably believes will cause the least damage to the building or inclosure, and take the property into his possession. He may call upon the power of the county to aid and protect him.

The sheriff shall, without delay, serve upon the defendant a copy of the writ of possession and written undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or, if neither have any known place of abode, by mailing them to their last known address.

History.

I.C., § 8-305, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-305 was repealed. See Prior Laws, § 8-301.

CASE NOTES

Breach of peace.

Constitutionality.

Breach of Peace.

Sheriff's cutting of farmer's chain or padlock in order to repossess combine would not amount to misconduct or a breach of the peace warranting the award of punitive damages and could not be termed malicious, wanton, or an extreme deviation from reasonable conduct. Massey-Ferguson Credit Corp. v. Peterson, 102 Idaho 111, 626 P.2d 767 (1980).

Constitutionality.

Since the new claim and delivery statute (this chapter) provides the debtor with a pre-seizure notice and hearing, it does not suffer from the constitutional defect of the former statute (former chapter 3 of title 8) which denied procedural due process. Massey-Ferguson Credit Corp. v. Peterson, 102 Idaho 111, 626 P.2d 767 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Replevin, § 47.

C.J.S. — 77 C.J.S., Replevin, § 61 et seq.

§ 8-306. Defendant's undertaking — Return of property. — At any time prior to the hearing of the order to show cause, or before the delivery of the property to the plaintiff, the defendant may require the return thereof upon filing with the court a written undertaking executed by two (2) or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the verified complaint or affidavit of the plaintiff or as determined by the court, for the delivery thereof to the plaintiff, if such delivery be ordered, and for the payment to him of such sum as may for any cause be recovered against the defendant. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or his attorney and the sheriff, if such property shall then be in the custody of the sheriff, a notice of filing of such undertaking, to which a copy of such undertaking shall be attached, and shall cause proof of service thereof to be filed with the court. If such undertaking be filed prior to hearing of the order to show cause, proceedings thereunder shall terminate, unless exception is taken to such sureties. If, at the time of filing of such undertaking, the property shall be in the custody of the sheriff, such property shall be redelivered to the defendant five (5) days after service of notice of filing such undertaking upon the plaintiff or his attorney, unless exception is taken to such sureties.

History.

I.C., § 8-306, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-306 was repealed. See Prior Laws, § 8-301.

CASE NOTES

Decisions Under Prior Law Damages for detention.

When remedy inadequate.

Damages for Detention.

In action by purchaser to recover possession of tractor taken by seller where purchaser did not file undertaking for delivery but only an undertaking for costs and defendant filed undertaking for redelivery but left tractor in possession of sheriff, the defendant who obtained judgment for possession was not entitled to any damages for detention. Michael v. Zehm, 74 Idaho 442, 263 P.2d 990 (1953).

When Remedy Inadequate.

A writ of mandate, rather than claim and delivery, was the proper remedy to require defendants to return books and records to plaintiff corporations, since under this section defendant could have posted a redelivery bond and retained possession of the books and records, perhaps defeating furtherance of business of plaintiff corporations; additionally, where a writ of mandamus directs the restitution of property by corporate officer as performance of his duty, it is not necessary to describe such property with the particularity required in a replevin proceeding. Silver Bowl, Inc. v. Equity Metals, Inc., 93 Idaho 487, 464 P.2d 926 (1970).

Since under this section the defendants would have been entitled to post a redelivery bond and retain possession of the corporate records even though the plaintiff had initiated a claim and delivery action, an action in mandamus, rather than an action in replevin, was proper. Nancy Lee Mines, Inc. v. Harrison, 93 Idaho 652, 471 P.2d 39 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Replevin, § 48.

C.J.S. — 77 C.J.S., Replevin, § 74 et seq.

§ 8-307. Qualifications of sureties — Protests. — The qualification of sureties under any written undertaking referred to in this chapter shall be such as are prescribed by this code, in respect to bail upon an order of civil arrest. Either party may, within two (2) days after service of an undertaking or notice of filing an undertaking under the provisions of this chapter, give written notice to the court, the other party and the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When a party excepts, the other party's sureties shall justify on notice within not less than two (2) nor more than five (5) days, in like manner as upon bail in civil arrest. If the property be in the custody of the sheriff, he shall retain custody thereof until the justification is completed or waived or fails. If the sureties fail to justify, the sheriff shall proceed as if no such undertaking had been filed. If the sureties justify or the exception is waived, he shall deliver the property to the party filing such undertaking.

History.

I.C., § 8-307, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-307 was repealed. See Prior Laws, § 8-301.

Compiler's Notes.

The reference to "this code" in this section is to the Code of Civil Procedure, a division of the Idaho Code, consisting of titles 1 through 13.

CASE NOTES

Decisions Under Prior Law Expense of bond.

Right to possession.

Title.

Expense of Bond.

In an action for replevin or claim and delivery, the expense of a bond in the amount required to effect redelivery of property to the person found to be wrongfully dispossessed thereof, is recoverable by such person. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Where defendants did not adduce any evidence as regards their alleged expense in obtaining the replevin bond necessary in their being repossessed of tractor allegedly wrongfully taken from them by sheriff, the trial court did not err in removing such issue from the jury, such recovery being precluded by their action. National Motor Serv. Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963).

Right to Possession.

Primary issue in action on claim and delivery of personal property is the right to possession of the property. Smith v. Cooper, 73 Idaho 99, 245 P.2d 816 (1952).

Title.

Plaintiff was not entitled to recover in action on claim and delivery of property where evidence showed that title was placed in name of plaintiff in order to secure him for advances made on logging operation, which advance had been paid by delivery of logs to plaintiff by defendant. Smith v. Cooper, 73 Idaho 99, 245 P.2d 816 (1952).

§ 8-308. Duties of sheriff. — When the sheriff has taken property as provided in this chapter, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his fees for taking and his necessary expenses for keeping the same, after expiration of five (5) days after service upon the defendant of a copy of the written undertaking as provided in section 8-305, Idaho Code, unless defendant shall file an undertaking for redelivery as provided in section 8-306, Idaho Code, and expiration of the time for exception to the sureties upon any undertaking, unless the court shall by order stay such delivery.

History.

I.C., § 8-308, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-308 was repealed. See Prior Laws, § 8-301.

§ 8-309. Third party claims. — In cases where the property taken is claimed by any person other than the defendant or his agent, the rules and proceedings applicable in cases of third party claims after levy under execution shall apply.

History.

I.C., § 8-309, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-309 was repealed. See Prior Laws, § 8-301.

RESEARCH REFERENCES

C.J.S. — 77 C.J.S., Replevin, § 40.

§ 8-310. Return of writ. — The sheriff shall return the writ of possession, with his proceedings thereon, to the court in which the action is pending, within twenty (20) days after taking the property mentioned therein.

History.

I.C., § 8-310, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Cross References.

Penalty for failure to return, § 31-2205.

Return of process after expiration of term of office, § 31-2225.

Return of process, prima facie evidence of facts, § 31-2204.

Prior Laws.

Former § 8-310 was repealed. See Prior Laws, § 8-301.

RESEARCH REFERENCES

C.J.S. — 77 C.J.S., Replevin, § 71 et seq.

§ 8-311. Orders to protect possession. — After the property has been delivered to a party or the value thereof secured by an undertaking as provided in this chapter, the court shall, by appropriate order, protect that party in the possession of such property until the final determination of the action.

History.

I.C., § 8-311, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-311 was repealed. See Prior Laws, § 8-301.

§ 8-312. Early settings. — In all proceedings brought to recover the possession of personal property, all courts in which such actions are pending, shall, upon request of any party thereto, give such actions precedence over all other civil actions, except actions to which special precedence is otherwise given by law, in the matter of setting the same for hearing or trial, and in hearing or trial thereof, to the end that all such actions shall be quickly heard and determined.

History.

I.C., § 8-312, as added by 1973, ch. 118, § 2, p. 219.

STATUTORY NOTES

Prior Laws.

Former § 8-312 was repealed. See Prior Laws, § 8-301.

Effective Dates.

Section 3 of S.L. 1973, ch. 118 declared an emergency. Approved March 14, 1973.

CASE NOTES

Non-exclusive claim.

Both the unlawful detainer process and the claim and delivery process are statutorily controlled. The claim and delivery statute provides that while such actions generally may be given precedence over other pending civil actions insofar as setting the same for hearing or trial, the statutes relating to claim and delivery process do not require, as does the unlawful detainer action (§ 6-310), that the action for recovery of personal property be an "exclusive" claim. Powder Basin Psychiatric Assocs. v. Ullrich, 129 Idaho 658, 931 P.2d 652 (Ct. App. 1996).

Chapter 4
INJUNCTIONS

Sec.

8-401 — 8-411. [Repealed.]

§ 8-401 — 8-411. Injunctions — Defined — Grounds — Procedure — Dissolution or modification. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 309-317; R.S., R.C., & C.L., §§ 4287-4297; C.S., §§ 6768-6778; I.C.A., §§ 6-401 — 6-411, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 65(a) et seq.

Idaho Code Ch. 5

Chapter 5
ATTACHMENTS

Sec.

8-501. Attachment — When applied for.

8-502. Application — Court examination — Order to show cause — Notice — Hearing — Temporary restraining order.

8-503. Undertaking — Notice of attachment — Intervening creditors.

8-504. Form of writ.

8-505. Property subject to attachment — Sale under execution.

8-506. Execution of writ.

8-506A. Attachment of a debtor's interest in personal property subject to security agreement — Attachment of defendant's interest in mortgage or trust deed — Attachment of defendant's interest in security agreement.

8-506B. Service of writ.

8-506C. Defendant's undertaking — Return of property.

8-506D. Sufficiency of sureties.

8-507. Applicability.

8-507A. Service on defendant and third parties by sheriff. [Repealed.]

8-507B. Service on defendant and third parties by bank or depository institution. [Repealed.]

8-507C. Forms. [Repealed.]

8-507D. Documents to be provided by plaintiff — Duties of sheriff — Service and mailing criteria — Time computation. [Repealed.]

8-508. Liability of garnishee. [Repealed.]

8-509. Examination of garnishee. [Repealed.]

8-510. Notice of garnishment — Discharge of garnishee. [Repealed.]

8-511. Interrogatories submitted to garnishee. [Repealed.]

8-512. Answer to interrogatories — Judgment against garnishee. [Repealed.]

8-513. Exception to answer — Amendment. [Repealed.]

8-514. Denial of answer — Replication — Trial, judgment, and execution. [Repealed.]

8-515. Judgment on answer — Costs and allowances. [Repealed.]

8-516. Judgment against garnishee. [Repealed.]

8-517. Allegation of assignment of debt — Procedure. [Repealed.]

8-518. Allegation of assignment of debt — Trial of issue. [Repealed.]

8-519. Claim of exemption by defendant. [Repealed.]

8-520. Liability of garnishee on negotiable paper. [Repealed.]

8-521. Liability of officers and executors as garnishees. [Repealed.]

8-522. Appeals in garnishment proceedings. [Repealed.]

8-523. Application of preceding sections. [Repealed.]

8-524. Inventory and memorandum of attached property.

8-525. Sale of perishable property — Collection of debts.

8-526. Order for sale of property in interest of parties.

8-527. Claim of property by third person or as exempt.

8-528. Sale of attached property to satisfy judgment.

8-529. Collection of deficiency after sale — Delivery of surplus to defendant.

8-530. Action on attachment bond.

8-531. Discharge on judgment for defendant.

8-532, 8-533. [Repealed.]

8-534. Vacation of irregular attachment.

8-535. Motion upon affidavit — How opposed.

8-536. Discharge — Amendments authorized.

8-537. Return of writ.

8-538. Discharge of lien on real estate.

8-539. Lien on real estate — Time effective — Duration — Termination — Extension.

8-540. Early setting.

§ 8-501. Attachment — When applied for. — The plaintiff at the time of the issuing of summons, or at any time afterwards may make application to have the property of the defendant attached in accordance with the procedures provided for in this chapter, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment as in this chapter provided in the following cases.

1. In an action upon a judgment, or upon contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage, deed of trust, security interest or lien upon real or personal property; or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

2. In an action upon a judgment, or upon contract, express or implied, or for the collection of any penalty provided by any statute of this state, against a defendant not residing in this state.

History.

C.C.P. 1881, § 318; R.S. & R.C., § 4302; am. 1913, ch. 51, § 1, p. 160; reen. C.L., § 4302; C.S., § 6779; I.C.A., § 6-501; am. 1974, ch. 307, § 2, p. 1793.

STATUTORY NOTES

Cross References.

Civil arrest in action to recover concealed or removed property, § 8-102.

Debts owing by state of Idaho subject to execution or garnishment after judgment, § 11-202.

Discharge of persons imprisoned on civil arrest, § 8-201 et seq.

Driving livestock from range by person other than owner, attachment of livestock of defendant, § 25-1302.

Fraternal benefit societies, benefits not attachable, § 41-3218.

Fraternal benefit societies, benefits not liable to garnishment, § 41-3218.

Liens barring attachments, § 8-502.

Proceedings against debtor of defendant's debtor, stay of transfer of property, § 11-507.

Property not capable of manual delivery subject to attachment, § 11-201.

Sheep disease control, attachment of property under act governing, § 25-139.

State, county or city not required to give bond, § 12-615.

Vendor lien statutes, §§ 45-801 to 45-803.

CASE NOTES

Action on covenant of warranty.

Actions wherein attachment issues.

Appeals.

Attachment against nonresidents.

Construction with section 6-101.

Damages for wrongful attachment.

Liens barring attachments.

Nature of remedy.

Nature of writ.

Obligation not due.

Priority of liens.

Subsequent or alias writs.

Time of issuance.

Unliquidated claim.

Action on Covenant of Warranty.

Where claim, as set out in complaint, was one based on the covenant contained in the warranty deed delivered by former owner and is an action upon "contract express or implied," this claim is within the contemplation

of this section requiring that the action be "for the direct payment of money." Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963).

Actions Wherein Attachment Issues.

The contract of an indorser of a promissory note or guarantor of a bill of exchange is a contract "for the direct payment of money," and an attachment may issue against property of such indorser or guarantor when action is brought to enforce payment of debt, the same as against acceptor or maker. Armstrong v. Slick, 14 Idaho 208, 93 P. 775 (1908).

The statute provides in what actions an attachment may issue. If and if complaint discloses that action is not such, and attachment is issued, then it was improperly issued, and upon proper motion it will be dissolved. Ross v. Gold Ridge Mining Co., 14 Idaho 687, 95 P. 821 (1908).

In action upon express contract for payment of money, plaintiff is entitled to have property attached and cannot be held in damages unless same was wrongful within meaning of statute. Taylor v. Fluharty, 35 Idaho 705, 208 P. 866 (1922).

In absence of express statutory provision, attachment will not lie on demands existing ex delicto; it is immaterial that same measure of damages might be applied as would govern in case of breach of contract. Sunderlin v. Warner, 42 Idaho 479, 246 P. 1 (1926).

A negotiable promissory note is a contract for direct payment of money and this characteristic is not destroyed by provision for reasonable attorney's fee in case of suit or action. It still remains an unconditional promise for the direct payment of money. Twin Falls Nat'l Bank v. Reed, 44 Idaho 573, 258 P. 526 (1927).

Where the circuit court of appeals had granted a decree enforcing back pay against an employer, on petition of the national labor relations board, it would restrain estranged wives and creditors of the employees entitled to the back pay from maintaining actions in the state court for the purpose of carrying into effect attachment writs and injunctive orders against the employer for the purpose of reaching the back pay, since the power to punish for contempt was not an adequate safeguard. NLRB v. Sunshine Mining Co., 125 F.2d 757 (9th Cir. 1942).

Where money is advanced on the purchase price of goods, and the seller fails or refuses to deliver, a suit to recover the money advanced is an implied contract for the direct payment of money permitting the issuance of an attachment. B. J. Carney & Co. v. Murphy, 68 Idaho 376, 195 P.2d 339 (1948).

An action for a balance due on an open, mutual and current account permits an attachment, there being an implied contract to pay the indebtedness. B. J. Carney & Co. v. Murphy, 68 Idaho 376, 195 P.2d 339 (1948).

If the complaint, by any reasonable intendment, discloses an action upon contract, express or implied, for the direct payment of money, the writ of attachment was properly issued. B. J. Carney & Co. v. Murphy, 68 Idaho 376, 195 P.2d 339 (1948).

Where complaint by affiant sought to recover amount paid nonresident in drilling of well on the ground of fraudulent representations by nonresident, attachment would lie since action was based on implied promise to repay expense as result of fraud, hence action was ex contractu. Wallace v. Perry, 74 Idaho 86, 257 P.2d 231 (1953).

Appeals.

Where plaintiff waived tort of defendant in order to bring action of attachment, and defendant moved to dissolve attachment, which court overruled, but defendant did not appeal from order overruling motion, the court on appeal will not consider question as to whether complaint for attachment was validly brought. Addy v. Stewart, 69 Idaho 357, 207 P.2d 498 (1949).

Attachment Against Nonresidents.

In attachment against property of defendant not residing in this state, it is not necessary to show by the affidavit for attachment that plaintiff has no security for debt. Foore v. Simon Piano Co., 18 Idaho 167, 108 P. 1038 (1910).

A corporation organized under the laws of a foreign jurisdiction, although engaged in business in this state and having complied with the constitution and all laws of this state affecting foreign corporations, is a

nonresident and subject to attachment as such. Jennings v. Idaho Ry. Light & Power Co., 26 Idaho 703, 146 P. 101 (1915).

This section, §§ 8-502 and 5-508 clearly authorized an action against a nonresident, and attachment of his property within the state, for the satisfaction of a debt owing to the plaintiff, and a judgment in favor of the plaintiff in such an action based upon substituted service is valid and enforceable to extent of the value of the properties seized. Skillern v. Ward, 79 Idaho 350, 317 P.2d 1050 (1957).

Construction with Section 6-101.

Section 6-101 providing there can be but one action for the recovery of any debt or the enforcement of any right secured by mortgage upon real estate or personal property is inapplicable to a debt that is secured as therein provided, but which security has become valueless; in such case the mortgagee has a complete and independent action on the note secured by the mortgage and may enforce the same therein. Edminster v. Van Eaton, 57 Idaho 115, 63 P.2d 154 (1936).

Damages for Wrongful Attachment.

Damages sustained by reason of the wrongful issuance of an attachment are proper matter for a cross-complaint in the attachment suit. Willman v. Friedman, 4 Idaho 209, 38 P. 937 (1894).

Where a promissory note maker's claim of wrongful attachment was based upon the theory that the suit itself was maliciously brought on an invalid note, but where the jury found the note valid and that theory of liability dissipated, the trial court committed no error in not allowing the jury to pass upon the issue sought to be raised by the maker's counterclaim. First Realty & Inv. Co. v. Rubert, 100 Idaho 493, 600 P.2d 1149 (1979).

Liens Barring Attachments.

An order drawn by defendant on his debtor, accepted by latter and placed in the hands of the creditor to secure the debt is such pledge of personal property as to preclude an attachment. Murphy v. Montandon, 3 Idaho 325, 29 P. 851 (1892).

Where W sold to F certain real estate upon executory contract, F going into possession, but title remaining in W until purchase-price is paid, W has

such a lien as bars him from resorting to attachment for the recovery of the unpaid portion of the purchase-price. Willman v. Friedman, 3 Idaho 734, 35 P. 37 (1893).

A reservation of title in vendor in a conditional sale contract until payment of the purchase price constitutes such a lien as precludes vendor from obtaining an attachment in an action to recover the unpaid portion of the purchase price. Willman v. Friedman, 3 Idaho 734, 35 P. 37 (1893); Mark Means Transf. Co. v. Mackinzie, 9 Idaho 165, 73 P. 135 (1903); Barton v. Groseclose, 11 Idaho 227, 81 P. 623 (1905).

Where an account is assigned as security and accepted on condition that a note by debtor in the account shall be substituted therefor, and the account is afterward liquidated by a note which is not executed in the form required by the agreement between assignor and assignee, and assignee refuses to accept same for that reason, there is no such security as to preclude the attachment. Simmons Hdwe. Co. v. Alturas Com. Co., 4 Idaho 334, 39 P. 550 (1895).

Claim must be founded upon contract for payment of money, payment of which has not been secured by any of means specified in statute. If it has been secured, however inadequately, attachment cannot issue unless such security, without any act of plaintiff or person to whom security was given, has become valueless. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922).

In action on note, the fact that security held by plaintiffs was situated in another state does not entitle them to resort to attachment. Mason v. Jansen, 45 Idaho 354, 263 P. 484 (1927).

Conclusion of court was that the contract to sell real and personal property of a ranch and the farming machinery and equipment was an executory contract of sale under the terms of which appellants retained title as security for the payment of the purchase price and, this being so, the contract was one expressly providing for security within the meaning of this section and § 8-502, and the attachment was properly discharged. Heinrich v. Barlow, 87 Idaho 72, 390 P.2d 831 (1964).

The claim must be one founded upon a contract for the direct payment of money, the payment of which has not been secured in any degree by any of

the means specified in the statute; if it has been secured, however inadequately, attachment cannot issue unless such security has without any act of the plaintiff or the person to whom the security was issued, become valueless. Heinrich v. Barlow, 87 Idaho 72, 390 P.2d 831 (1964).

Nature of Remedy.

Attachment is such a provisional remedy as reaches out and lays hold upon property by proceeding in rem and subjects it to payment of the debt for recovery of which action was instituted. Potlatch Lumber Co. v. Runkel, 16 Idaho 192, 101 P. 396 (1909).

The remedy by attachment is purely statutory and summary and a party must, in order to have the benefit of this statutory process, do everything required by the authorizing statutes. Heinrich v. Barlow, 87 Idaho 72, 390 P.2d 831 (1964).

Nature of Writ.

Attachment is a creature of statute; it did not exist as such at common law. If and when it accomplishes the purpose of inducing a personal appearance of the alleged debtor, the case then proceeds in personam, and the attachment is collateral only. Sherwood v. Porter, 58 Idaho 523, 76 P.2d 928 (1938).

Attachment proceedings are entirely statutory, and it is within the province of the legislature to place any limitations upon or extend the right of an attaching creditor, which the legislature deems advisable. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919).

Obligation Not Due.

The statute does not require either by express terms or by implication that the affidavit contain an allegation that the debt is due. Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963).

Priority of Liens.

Where the plaintiff attached defendant's bank account and obtained judgment prior to the filing of a federal tax lien, but had execution levied on the bank account after such filing, the judgment plaintiff's attachment and judgment lien had priority over the federal tax lien. United States v. Brame, 243 F. Supp. 29 (D. Idaho 1965).

Subsequent or Alias Writs.

Since there is nothing in the statute prohibiting the issuance of subsequent or alias writs of attachment, there was no merit in respondent's contention that the writ of attachment of 1959 could not issue while the previous writ was still outstanding. Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963).

Time of Issuance.

A writ of attachment issued prior to the issuance of any summons or to the appearance of defendant in case would be subject to discharge on motion on the ground that same was improperly issued. Ridenbaugh v. Sandlin, 14 Idaho 472, 94 P. 827 (1908).

The legislature did not intend to allow plaintiff to commence action and let his complaint lie in the files of the court for one year, and at same time have defendant's property attached and held under process for payment of debt that he has taken no steps to reduce to a final judgment. Ridenbaugh v. Sandlin, 14 Idaho 472, 94 P. 827 (1908).

Unliquidated Claim.

It is not essential the amount of the claim on the contract, express or implied, on which the attachment is based, be certain or liquidated, if it be of such nature that the damages are easily ascertainable according to fixed standards supplied by the contract or the law acting upon it. Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963).

That the amount of recovery is uncertain and has to be proved does not defeat attachment. Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963).

Cited Vollmer v. Spencer, 5 Idaho 557, 51 P. 609 (1897); Newman v. Cheesman Auto. Co., 33 Idaho 685, 197 P. 826 (1921); Blankenship v. Myers, 97 Idaho 356, 544 P.2d 314 (1975); Slayton v. Zapp, 108 Idaho 244, 697 P.2d 1258 (Ct. App. 1985); Sinclair & Co. v. Gurule, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 38 et seq.

C.J.S. — 7 C.J.S., Attachment, § 18 et seq.

ALR. — Construction and effect of provision for execution sale on short notice, or sale in advance of judgment under writ of attachment, where property involved is subject to decay or depreciation. 3 A.L.R.3d 593.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors. 11 A.L.R.3d 1465.

Attachment and garnishment of funds in branch bank or main office of bank having branches. 12 A.L.R.3d 1088.

Family allowance from descendant's estate as exempt from attachment, garnishment, execution, and foreclosure. 27 A.L.R.3d 863.

Potential liability of insurer under liability policy as subject of attachment. 33 A.L.R.3d 992.

Client's funds in hands of his attorney as subject of attachment or garnishment by client's creditor. 35 A.L.R.3d 1094.

Liability of creditor for excessive attachment or garnishment. 56 A.L.R.3d 493.

Excessiveness or inadequacy of attorneys' fees in matters involving commercial and general business activities. 23 A.L.R.5th 241.

What constitutes malice sufficient to justify an award of punitive damages in action for wrongful attachment or garnishment. 61 A.L.R.3d 984.

Recovery of damages for mental anguish, distress, suffering, or the like, in action for wrongful attachment, garnishment, sequestration, or execution. 83 A.L.R.3d 598.

Uniform Consumer Credit Code, construction and effect of. 86 A.L.R.3d 317.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one joint depositor. 86 A.L.R.5th 527.

§ 8-502. Application — Court examination — Order to show cause — Notice — Hearing — Temporary restraining order. — (a) A plaintiff desiring the issuance of a writ of attachment shall file with the court an application therefor supported by an affidavit made by or on behalf of plaintiff setting forth:

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal setoffs or counterclaims) and whether upon a judgment or upon a contract for the direct payment of money, and that the payment of the same has not been secured by any mortgage, deed of trust, security interest or lien upon real or personal property, or if originally secured, that such security has, without an act of the plaintiff, or the person to whom the security was given, become valueless.

2. When the defendant is a nonresident of this state, that such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal setoffs or counterclaims), and that defendant is a nonresident of the state.

3. That the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant.

(b) The court shall, without delay, examine the complaint and affidavit, and if satisfied that they meet the requirements of subdivision (a), it shall issue an order directed to the defendant to show cause why a writ of attachment should not issue. Such order shall fix the date and time for the hearing thereon, which shall be no sooner than five (5) days from the issuance thereof, and shall direct the time within which service thereof shall be made upon the defendant. Such order shall inform the defendant he may file affidavit on his behalf with the court and may appear and present testimony on his behalf at the time of such hearing, or he may, at or prior to such hearing, file with the court a written undertaking to stay the issuance of the writ of attachment in accordance with the provisions of section 8-506C, Idaho Code, and that if he fails to appear plaintiff will apply to the court for a writ of attachment without further notice to defendant. If the attachment has issued prior to the hearing, the defendant may apply to the

court to have the hearing set at an earlier date. Such order shall fix the manner in which service thereof, together with a copy of the complaint and affidavit, shall be made, which shall be by personal service, or in such manner as the judge may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the complaint and affidavit. The plaintiff shall cause proof of service to be filed with the court prior to the hearing.

(c) Upon examination of the complaint and affidavit and such other evidence or testimony as the judge may, thereupon, require, a writ of attachment may be issued prior to hearing, if probable cause appears that any of the following exist:

(1) The jurisdiction of the court is predicated upon attachment of the defendant's property within this state;

(2) The property specifically sought to be attached consists of one (1) or more negotiable instruments. In such case the writ shall by its terms restrict the levy by the sheriff thereunder, to such negotiable instruments;

(3) By reason of specific facts shown, the property specifically sought to be attached is a bank account subject to the threat of imminent withdrawal, or is perishable, and will perish before any noticed hearing can be had, or is in immediate danger of destruction, serious harm, concealment, or removal from this state, or of sale to an innocent purchaser, and the holder of such property threatens to destroy, harm, conceal, remove it from the state, or sell it to an innocent purchaser. In such case the writ shall by its terms limit the levy by the sheriff thereunder to such specific property.

Where a writ of attachment has been issued prior to hearing under the provisions of this section, the defendant or other person from whom possession of such property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause, and the court may, upon such application, shorten the time for such hearing, and direct that the matter be heard on not less than forty-eight (48) hours' notice to the plaintiff.

(d) Under any of the circumstances described in subsection (a), or paragraph (1) of subsection (c) of this section, or in lieu of the immediate

issuance of a writ of attachment under any of the circumstances described in paragraphs (2) and (3) of subsection (c) of this section, the judge may, in addition to the issuance of an order to show cause, issue such temporary restraining orders, directed to the defendant, prohibiting such acts with respect to the property, as may appear to be necessary for the preservation of rights of the parties and the status of the property.

(e) Upon the hearing on the order to show cause, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination of whether there is a reasonable probability that the plaintiff will prevail in its claim. If the court makes this determination favorably to the plaintiff, it shall, upon examination of the evidence or testimony submitted and such other evidence or testimony as the judge may thereupon[,] require, determine the proper amount to be specified in the undertaking required by section 8-503, Idaho Code, and if requested, the value of any property sought to be retained by or returned to defendant and the proper amount to be specified in any undertaking which may be or has been filed by defendant pursuant to section 8-506C, Idaho Code. If the court determines that the action is one in which a writ of attachment should issue, it shall direct the issuance of such writ. The court may direct the order in which the writ shall be levied upon different assets of the defendant, if, in the aggregate, they exceed in value an amount clearly adequate to secure any judgment which may be recovered by the plaintiff.

History.

C.C.P. 1881, § 319; R.S., & R.C., § 4303; am. 1913, ch. 51, § 2, p. 160; reen. C.L., § 4303; C.S., § 6780; I.C.A., § 6-502; am. 1974, ch. 307, § 3, p. 1793.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Brackets were placed around the comma in the second sentence in subsection (e) by the compiler, as that comma improperly appears in the 1974 session laws.

CASE NOTES

Absence of signature.

Affidavit in attachment against nonresidents.

Amendment of affidavit.

Averment as to security.

Averment of amount due.

Averment of several grounds in alternative.

Averment that debt is due.

Compliance with statute.

Danger to property.

Double causes of action.

Failure to allow attorneys' fees.

False affidavit.

Indebtedness of defendant to plaintiff.

Nonresidents.

Security becoming valueless.

Security outside of state.

Time of filing.

Absence of Signature.

Absence of affiant's signature from affidavit does not vitiate it where same is duly verified. Simmons Hdwe. Co. v. Alturas Com. Co., 4 Idaho 334, 39 P. 550 (1895).

Affidavit in Attachment Against Nonresidents.

Under each subdivision, 1 and 2, the affidavit for an attachment must state amount of the indebtedness sought to be recovered, over and above all legal setoffs and counterclaims. Kerns v. McAulay, 8 Idaho 558, 69 P. 539 (1902).

Affidavit need not allege that defendant has property in the state. Kerns v. McAulay, 8 Idaho 558, 69 P. 539 (1902).

Defects in an affidavit for attachment against a nonresident who is not personally served with process go to the jurisdiction of the court and preclude entry of a valid judgment in the action. Kerns v. McAulay, 8 Idaho 558, 69 P. 539 (1902).

The nonresidence of the defendant must be stated positively, and a writ of attachment based on an affidavit which does not so state it is improperly and irregularly issued. Heaton v. Panhandle Smelting Co., 32 Idaho 146, 179 P. 510 (1919).

Amendment of Affidavit.

Under statutes providing for amendment (§ 8-536), defective statement of ground for attachment is generally held amendable. Bear Lake State Bank v. Wilcox, 48 Idaho 147, 279 P. 1090 (1929).

Where an amended affidavit for attachment showed that the original affidavit on which the attachment was issued was false in representing that the payment of the debt sued on had not been secured by a mortgage, in absence of a showing that the false statement in the original affidavit was made innocently, the trial judge was not bound to accept as true the amended affidavit stating that the security which had been given had become valueless. Casebeer v. Todd, 62 Idaho 702, 115 P.2d 746 (1941).

Trial court correctly denied appellants' motion to strike respondent's amended affidavit for attachment, made by its treasurer on its behalf and in affirmative terms, not upon information and belief; no hearing having been held on appellants' amended motion to dissolve attachment when the amended affidavit was filed, it was sufficient and timely. Salt Lake Hdwe. Co. v. Steffler, 87 Idaho 383, 393 P.2d 607 (1964).

Averment as to Security.

Failure of an affidavit for attachment to state that debt sued upon is not secured by "any pledge of personal property" does not render attachment ineffective or void when it does allege that same has not been secured by any mortgage or lien on real or personal property; lien includes "pledge." Glidden v. Whittier, 46 F. 437 (C.C.D. Idaho 1891).

A party who holds a secured claim against another cannot secure the benefit of the attachment law therefor by procuring an assignment of small unsecured claims and writing such claims in same complaint with secured claims. Willman v. Friedman, 3 Idaho 734, 35 P. 37 (1893).

When debt is secured by mortgage, attachment affidavit in a suit to recover debt must allege that the mortgage was given and that same has become valueless without any act of plaintiff; if it falsely states that debt is unsecured, the attachment should be dissolved on motion, although it is shown that security has become valueless. Vollmer v. Spencer, 5 Idaho 557, 51 P. 609 (1897).

Where the affidavit partially follows the language of the statute in regard to debt not being secured, but fails to state that it is not secured by "pledge of personal property," and contains no statement equivalent to that, the affidavit is not sufficient. Knutsen v. Phillips, 16 Idaho 267, 101 P. 596 (1909).

Affidavit must negative every form of security mentioned in statute. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922).

Affidavit should set out specifically that indebtedness sued on has not been secured "by any mortgage or lien upon real or personal property or by any pledge of personal property," or words to that effect. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922).

Statute provides for affidavit in two classes of cases: (1) Where debt has not been secured, which fact should be stated in affidavit; (2) where debt has been secured but security has become valueless; in latter case it is not necessary that affidavit should state that debt has not been secured, but only that security originally given has become valueless without fault of plaintiff. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922); Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

Where it appears that debt which is subject of action was secured within meaning of this section at time affidavit was made, writ should be dismissed. Hill v. Bennett, 37 Idaho 161, 215 P. 471 (1923).

Where affidavit for attachment alleges that debt sued upon had not been secured by any of the specific kinds of security designated in this section, a joint checking account of plaintiff and defendant does not constitute such

security as to bar the action. Citizens Auto. Inter-Ins. Exch. v. Andrus, 70 Idaho 114, 212 P.2d 406 (1949).

Conclusion of court was that the contract to sell real and personal property of a ranch and the farming machinery and equipment was an executory contract of sale under the terms of which appellants retained title as security for the payment of the purchase price and this being so the contract was one expressly providing for security within the meaning of this section and § 8-501, and the attachment was properly discharged. Heinrich v. Barlow, 87 Idaho 72, 390 P.2d 831 (1964).

The claim must be one founded upon a contract for the direct payment of money, the payment of which has not been secured in any degree by any of the means specified in the statute. If it has been secured, however inadequately, attachment cannot issue unless such security has, without any act of the plaintiff or the person to whom the security was issued, become valueless. Heinrich v. Barlow, 87 Idaho 72, 390 P.2d 831 (1964).

Averment of Amount Due.

Affidavit which fails to specify amount of indebtedness sought to be recovered over and above all legal setoffs and counterclaims is fatally defective and gives court no jurisdiction to issue writ. Kerns v. McAulay, 8 Idaho 558, 69 P. 539 (1902); Sunderlin v. Warner, 42 Idaho 479, 246 P. 1 (1926).

An error in attachment affidavit in claiming larger debt than that found due by the judgment does not vitiate the attachment. Finney v. Moore, 9 Idaho 284, 74 P. 866 (1903).

Averment of Several Grounds in Alternative.

An affidavit alleging two or more grounds of attachment, in the alternative, is insufficient, and writ issued thereon is properly discharged. Heaton v. Panhandle Smelting Co., 32 Idaho 146, 179 P. 510 (1919).

Averment That Debt Is Due.

This section does not require, expressly or by implication, that the affidavit contain an allegation that "the debt is due." Ross v. Gold Ridge Mining Co., 14 Idaho 687, 95 P. 821 (1908).

The statute does not require either by express terms or by implication that the affidavit shall contain an allegation that the debt is due. Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963).

Compliance with Statute.

The affidavit must set forth the facts which show or prove the cause of action to be on a contract, express or implied. It is not enough for plaintiff to swear that it is upon an express or implied contract. Carter v. Watson, 52 Idaho 805 (1866).

Where it is shown that the suit is based upon a promissory note providing that the express condition of the sale and purchase of the goods for which the note was given is such that the title, ownership, or possession does not pass until the note and interest is paid in full, and that the payee has full power to declare the note due and take possession of the goods at any time, he may deem himself insecure, even before the specified maturity of same, unless it is shown by the affidavit that the security is beyond his reach or has become valueless through no fault of his, attachment cannot be maintained upon action for purchase price. Mark Means Transf. Co. v. Mackinzie, 9 Idaho 165, 73 P. 135 (1903).

It is not necessary to allege any other facts than those specified in statute. Ross v. Gold Ridge Mining Co., 14 Idaho 687, 95 P. 821 (1908).

Affidavit must substantially conform to provisions of statute; otherwise, attachment will be discharged. Bellevue State Bank v. Lilya, 35 Idaho 270, 205 P. 893 (1922).

Affidavit must be liberally construed and must be held sufficient if it appears that language therein used is substantially equivalent to that used in statute. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922) (quoting Knutsen v. Phillips, 16 Idaho 267, 101 P. 596 (1909)).

When affidavit is sufficient on its face, court has jurisdiction to issue writ. Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

This section authorizes issuance of writ only upon affidavit that defendant is indebted to plaintiff over and above all legal setoffs and counterclaims upon judgment or contract for direct payment of money. Sunderlin v. Warner, 42 Idaho 479, 246 P. 1 (1926).

An affidavit for attachment which sets forth the particular allegations required by the statute is sufficient. B. J. Carney & Co. v. Murphy, 68 Idaho 376, 195 P.2d 339 (1948).

Where the facts alleged in the affidavit meet the requirement of the statute, it is sufficient. Citizens Auto. Inter-Ins. Exch. v. Andrus, 70 Idaho 114, 212 P.2d 406 (1949).

Where the bank's affidavit did not establish probable cause and the in-chambers conversation with the bank's counsel was unrecorded, the record reflected nothing from which the court could determine that the statutory requirements were met at the time the writ was issued; thus, the writ should not have been issued, and the attachment was therefore wrongful. Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985).

Danger to Property.

Subdivision (c)(3) of this section requires that the danger of damage to or impairment of the property be established by "specific facts"; mere conclusions that some danger exists are inadequate. Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985).

The affidavit of the bank did not indicate the vehicles were in immediate danger of removal, destruction, sale, or concealment, nor did it give any specific facts indicating that the owners were threatening to remove, destroy, sell, or conceal the vehicles; therefore, the affidavit alone did not justify attachment of the vehicles. Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985).

The fact that the owners had deposited checks which were drawn on an account with insufficient funds and then failed to remedy the situation did not indicate danger to the vehicles; therefore, these allegations in the complaint, incorporated by reference in the bank's affidavit, did not state a basis for issuance of a writ of attachment to seize the owners' vehicles. Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985).

Double Causes of Action.

Where an attachment is sought on two causes of action and the affidavit is false as to one cause stated and a single writ is issued to cover both causes of action, the attachment will be dissolved on motion as to both causes of action. Vollmer v. Spencer, 5 Idaho 557, 51 P. 609 (1897).

Where two causes of action are stated and the statutory grounds exist, plaintiff may have separate writs issued as to each cause of action or he may procure one writ for both causes. Vollmer v. Spencer, 5 Idaho 557, 51 P. 609 (1897).

Failure to Allow Attorneys' Fees.

Where, in an attachment action brought in the probate court, the affidavit in attachment claimed attorney fees, which were allowed in the probate court, and, on appeal to the district court the judgment was reduced in an amount equal to that allowed for attorney fees in said probate court, failure to allow attorney fees in the district court will be considered an inadvertence since plaintiff in attachment was entitled thereto by reason of the fact that the note sued on provided therefor, and the variance between the affidavit and the recovery in the district court was not sufficient to render the attachment void. McCall v. First Nat'l Bank, 47 Idaho 519, 277 P. 562 (1929).

False Affidavit.

Where an attachment affidavit is false, court has no jurisdiction to issue writ. Murphy v. Montandon, 3 Idaho 325, 29 P. 851 (1892).

Indebtedness of Defendant to Plaintiff.

A negotiable promissory note is a contract for the direct payment of money, and this characteristic is not destroyed by the provision for a reasonable attorney's fee in case of suit or action, for it still remains an unconditional promise for the direct payment of money. Twin Falls Nat'l Bank v. Reed, 44 Idaho 573, 258 P. 526 (1927).

Nonresidents.

In attachment proceeding against nonresident, the affidavit does not have to show the lack or failure or valuelessness of any security. Wallace v. Perry, 74 Idaho 86, 257 P.2d 231 (1953).

Section 8-501, this section, and § 5-508 clearly authorized an action against a nonresident, and attachment of his property within the state for the satisfaction of a debt owing to the plaintiff and a judgment in favor of the plaintiff in such an action based upon substituted service is valid and

enforceable to extent of the value of the properties seized. Skillern v. Ward, 79 Idaho 350, 317 P.2d 1050 (1957).

Since Idaho statutes authorized substitute service in an action against a nonresident for debt, and service being essential to the maintenance of such an action, the court did not err in denying the motion to quash service of summons secured by substitute service on a nonresident husband in an action by divorced wife to recover past due installments of child support on the ground that the action was not in rem. Skillern v. Ward, 79 Idaho 350, 317 P.2d 1050 (1957).

Security Becoming Valueless.

Simple statement that security has become worthless is insufficient without further statement that it became so "without any act of the plaintiff, or the person to whom the security was given." Bellevue State Bank v. Lilya, 35 Idaho 270, 205 P. 893 (1922); Bear Lake State Bank v. Wilcox, 48 Idaho 147, 279 P. 1090 (1929).

By foreclosure sale, property becomes valueless as security. Theory appears to be that exhaustion of security by foreclosure is by writ of law and through authority of mortgagor or pledgor. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922).

Where property covered by chattel mortgage has been sold by consent of parties without formality of foreclosure proceedings, it has become valueless without consent of mortgagee within meaning of this section. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922).

Security may become valueless by reason of physical destruction of property, or by removal of property from jurisdiction of court, or by its concealment or theft, and in all these cases, clearly, it is without any act of claimant or person to whom security is given. Farmers State Bank v. Gray, 36 Idaho 49, 210 P. 1006 (1922).

It is not necessary that affidavit disclose that payment of debt "has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property," when it appears from such affidavit that debt was originally secured and "that such security, without any act of the plaintiff, has become valueless." Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

Security Outside of State.

The fact that a debt was secured and that the property securing the same is beyond the territorial limits of the state is sufficient to prevent the issuance of attachment. Mason v. Jansen, 45 Idaho 354, 263 P. 484 (1927).

Time of Filing.

Since an affidavit for attachment must show existence of jurisdictional facts at the time of the issuance of the writ, an affidavit filed twenty-eight (28) days before the issuance of the writ is not sufficient to support writ when issued, and writ should be discharged. Murphy, Grant & Co. v. Zaspel, 11 Idaho 145, 81 P. 301 (1905).

Cited Ridenbaugh v. Sandlin, 14 Idaho 472, 94 P. 827 (1908); Foore v. Simon Piano Co., 18 Idaho 167, 108 P. 1038 (1910); Newman v. Cheesman Auto. Co., 33 Idaho 685, 197 P. 826 (1921); Jeppesen v. Rexburg State Bank, 57 Idaho 94, 62 P.2d 1369 (1936); Blankenship v. Myers, 97 Idaho 356, 544 P.2d 314 (1975); Yacht Club Sales & Serv., Inc. v. First Nat'l Bank, 101 Idaho 852, 623 P.2d 464 (1980); Sinclair & Co. v. Gurule, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988); Quintana v. Quintana, 119 Idaho 1, 802 P.2d 488 (Ct. App. 1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 226 et seq.

C.J.S. — 7 C.J.S., Attachment, § 96 et seq.

§ 8-503. Undertaking — Notice of attachment — Intervening creditors. — (a) No writ of attachment shall issue except upon the filing with the court of a written undertaking on the part of the plaintiff in such amount as determined to be proper by the court pursuant to subsection (e) of section 8-502, Idaho Code, to the effect that, if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment not exceeding the sum specified in the undertaking; and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto under section 8-501, Idaho Code, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. No such security shall be required of the state or of any political subdivision, or of an officer or agency thereof.

(b) Within two (2) days after issuing such writ and delivering it to the proper officer, the clerk must post at the front door of the courthouse and cause to be published in some newspaper published in the county, if there be one, or otherwise in a newspaper of general circulation in the county, a notice, setting out the title of the cause and the fact that an attachment has been issued against the property of the defendant. Such notice shall be kept posted at least ten (10) days and shall be published, if in a weekly paper, in three (3) issues thereof, and if any other than a weekly paper, in at least six (6) issues. Any creditor of the defendant, who, within thirty (30) days after the first posting and publication of such notice, shall commence and thereafter diligently prosecute to final judgment his action for his claim against the defendant shall share pro rata with the attaching creditor in the proceeds of defendant's property where there is not sufficient to pay all judgments in full against him.

History.

C.C.P. 1881, § 320; R.S., § 4304; am. 1895, p. 75, § 1; reen. 1899, p. 250, § 1; reen. R.C., & C.L., § 4304; C.S., § 6781; am. 1921, ch. 206, § 1, p. 416; I.C.A., § 6-503; am. 1974, ch. 307, § 4, p. 1793.

STATUTORY NOTES

Cross References.

Averment as to security, § 8-501.

General form of undertaking, § 12-613.

Justification of bail on arrest, § 8-118.

Justification of sureties, § 12-614; Idaho R. Civ. P. 66 (a).

State, county or city need not give bond, § 12-615; Idaho R. Civ. P. 65(c).

Statutory form of undertaking, § 12-613; Idaho R. Civ. P. 66(a).

Surety insurer may be sole surety, § 41-2604.

CASE NOTES

Amendment of defective bond.

Application of section.

Attaching creditor not entitled to notice.

Attachment lien not unqualified.

Clerical errors.

Constitutionality and purpose.

Federal bankruptcy law.

Intervention.

Judgment creditor entitled to prorate.

Jurisdiction.

Justice's courts.

Levy unnecessary.

Publication of notice.

Recovery of costs and damages.

Remedy for wrongful attachment.

Right to prorate.

Statute of limitations.

Sufficiency of bond.

Suits on bonds.

Validity of attachment.

Amendment of Defective Bond.

When the original bond was merely irregular and subject to amendment, it was the duty of the trial court to permit the filing of the surety bond as of the date it was tendered. Gordon v. Kerr, 53 Idaho 106, 21 P.2d 930 (1933).

Application of Section.

Action for damages for trespass to personal property of plaintiff, namely ousting plaintiff from possession and control of his truck and contents was not an action for wrongful attachment under this section nor a case in which plaintiff was entitled to appear in the probate court and move for dissolution pursuant to § 8-534, the remedy and rights given by those sections being available only to defendant in the case in which attachment is issued; plaintiff's only remedy was either by way of intervention in the attachment case, § 5-322 (repealed, now see Idaho R. Civ. P. 24(a) through 24(c)), or by a third party claim under §§ 8-532 (repealed) and 11-203. Jaquith v. Stanger, 79 Idaho 49, 310 P.2d 805 (1957).

Attaching Creditor Not Entitled to Notice.

Since, under the provisions of this section, the attaching creditor is not deprived of a vested lien, the fact that no notice of proceeding against him is therein provided for does not operate to deprive him of his property without due process of law or of the equal protection of the law, and this section does not contravene the provisions of the 14th Amendment to the Federal Constitution. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919).

Attachment Lien Not Unqualified.

The attaching creditor under this section does not have an unqualified lien, but takes his lien subject to the provision that under the circumstances mentioned in this section, other creditors will be entitled to share in the

proceeds of the attached property pro rata. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919).

Clerical Errors.

A clerical error in the attachment bond, such as the insertion of the words "under execution," does not vitiate the bond where same substantially indemnifies defendant. Simmons Hdwe. Co. v. Alturas Com. Co., 4 Idaho 334, 39 P. 550 (1895).

Clerical errors or irregularities in preparation of papers do not render party liable in damages for wrongful attachment. Taylor v. Fluharty, 35 Idaho 705, 208 P. 866 (1922).

Constitutionality and Purpose.

Constitutionality of this statute considered and upheld. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919); Quirk v. Diana Mines Co., 34 Idaho 30, 198 P. 672 (1921).

Manifest purpose of act is to provide fair and equitable distribution of available and attached assets of debtor. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919); Quirk v. Diana Mines Co., 34 Idaho 30, 198 P. 672 (1921).

The purpose of this statute is to give security to the attachment debtor upon which recovery might be had in the event damages are sustained by reason of the attachment. Gordon v. Kerr, 53 Idaho 106, 21 P.2d 930 (1933).

Federal Bankruptcy Law.

In order for a State Insolvency Law to be suspended by the Federal Bankruptcy Act, the State Law must provide for the discharge of the debtor, and since this section contains no such provision it is not an insolvency law, and its operation is not suspended by the Federal Bankruptcy Act. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919).

Intervention.

One claiming an interest in attached property has a right to intervene in the action in which it is attached. First Nat'l Bank v. Denbrae Sheep Co., 44 Idaho 447, 258 P. 365 (1927).

Judgment Creditor Entitled to Prorate.

When property is attached on process out of the district court, all judgment creditors coming within the hereinabove prescribed rule are entitled to prorate, the theory being that the first attachment holds the property for the benefit of all creditors who reduce their claims to judgment within 60 days, thereby relieving them from the responsibility and the debtor from the costs of additional attachment process. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919).

Judgment creditors are entitled to prorate without reference to whether such judgments have been procured in the district court or in a justice or probate court or have been docketed in the district court within the 60-day period or at all. Greene v. Rice, 32 Idaho 504, 186 P. 249 (1919).

Jurisdiction.

Where first creditor in attachment proceeding obtained an order for sale of personal property, and a second creditor in another proceeding in which debtor and first creditor were parties obtained an order to share in proceeds of sale, the court had jurisdiction in second proceeding to entertain a motion to vacate the sale, since proceedings were interrelated and parties were before the court. Joy Mfg. Co. v. R.S. McClintock Diamond Drilling Co., 77 Idaho 309, 291 P.2d 874 (1955).

Justice's Courts.

The provisions of this section for prorating proceeds of attached property after advertisement of notice do not apply to justice's court practice. Kimball v. Raymond, 9 Idaho 176, 72 P. 957 (1903).

Levy Unnecessary.

Levy of execution before suing on bond is unnecessary where judgment debtor has been adjudicated a bankrupt. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Publication of Notice.

Notice of issuance of writ of attachment required to be given by clerk is intended for protection and benefit of other creditors of defendant, and failure to give notice is not available to defendant in attachment proceeding, and does not enable him to avoid the attachment or subsequent execution

sale thereunder. Foore v. Simon Piano Co., 18 Idaho 167, 108 P. 1038 (1910).

It is duty of plaintiff in attachment action to inform himself if clerk has posted notice and require him to act in case of failure. Quirk v. Diana Mines Co., 34 Idaho 30, 198 P. 672 (1921).

Purpose of notice of attachment is to give creditors notice, so if they desire to prorate they may prosecute their claims against debtor. Quirk v. Diana Mines Co., 34 Idaho 30, 198 P. 672 (1921).

Recovery of Costs and Damages.

This section provides that a party aggrieved by a wrongful attachment may recover costs and damages sustained "by reason of the attachment." This recovery may include attorney fees incurred in successfully challenging the attachment. However, when the attachment itself is not challenged, but the aggrieved party defeats the attachment simply by prevailing in the dispute over the alleged debt, the right to recover attorney fees under this section is unclear. Cole v. Kunzler, 115 Idaho 552, 768 P.2d 815 (Ct. App. 1989).

Remedy for Wrongful Attachment.

One against whom attachment was wrongfully issued is entitled to recover, as damages, expenses which he incurred in defending against attachment. Moseley v. Fidelity & Deposit Co., 33 Idaho 37, 189 P. 862 (1920).

As general rule, expenses incurred in defense of main action are not recoverable against surety, except when trial of main action is necessary to vacate attachment. Moseley v. Fidelity & Deposit Co., 33 Idaho 37, 189 P. 862 (1920).

Counsel fees may be recovered as damages in defending against attachment, but they are not generally recoverable for services in defending principal action. Moseley v. Fidelity & Deposit Co., 33 Idaho 37, 189 P. 862 (1920).

Right to Prorate.

Under this section, a creditor, in order to be entitled to prorate in the proceeds of attached property, must both commence his action within the

statutory period and prosecute same to final judgment within the statutory period. Howard v. Grimes Pass Placer Mining Co., 21 Idaho 12, 120 P. 170 (1911).

Creditors can not be deprived of their right to prorate by failure of clerk to post notice of attachment, if they commence their actions within statutory limit. Quirk v. Diana Mines Co., 34 Idaho 30, 198 P. 672 (1921).

Right to prorate is purely statutory and creditors have no rights except as obtained from statute. Quirk v. Diana Mines Co., 34 Idaho 30, 198 P. 672 (1921).

Appointment of receiver does not operate in derogation of provision which allows creditor who prosecutes his claim to judgment within statutory period to come in and prorate with attaching creditor. National City Bank v. Idaho Lumber Co., 39 Idaho 677, 229 P. 663 (1924).

Recovery could not be had on redelivery bonds after dismissal of attachment lien by stipulation, where plaintiff had not made issue as to right to prorate. First Nat'l Bank v. Denbrae Sheep Co., 44 Idaho 447, 258 P. 365 (1927).

Where action was not commenced within thirty (30) days after levy of attachment in another case against same debtor, judgment was inferior to lien acquired by the attachment. Evans v. Power County, 50 Idaho 690, 1 P.2d 614 (1931).

Where creditors' actions in federal court were not commenced within thirty (30) days after attachment levy in actions in state court, debtor's assignee redeeming from sale under judgments in state court took subject to liens of federal court judgments. Evans v. Power County, 50 Idaho 690, 1 P.2d 614 (1931).

Attachment need not be levied provided action is brought within thirty (30) days after levy of first attachment and diligently prosecuted to judgment. Linch v. Perrine, 51 Idaho 152, 4 P.2d 353 (1931).

Statute of Limitations.

Statute of limitations begins to run immediately upon return of execution as to an action on bond given under this section. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Sufficiency of Bond.

While the clerk has a discretion in fixing the amount of the undertaking, he should in all cases require an undertaking in not less than the amount of the claim sued for. Willman v. Friedman, 3 Idaho 734, 35 P. 37 (1893); Finney v. Moore, 9 Idaho 284, 74 P. 866 (1903).

Failure of the clerk to require an undertaking, when amount sued for is in excess of $200, equal to amount sued for is not a ground for dissolving the attachment. Ross v. Gold Ridge Mining Co., 14 Idaho 687, 95 P. 821 (1908).

Undertaking following wording of statute is sufficient. Moseley v. Fidelity & Deposit Co., 33 Idaho 37, 189 P. 862 (1920).

Objections to the sufficiency of the sureties on the original bond were waived by failing to except thereto within the statutory time. Gordon v. Kerr, 53 Idaho 106, 21 P.2d 930 (1933).

The clerk has a large discretion in fixing the amount of the undertaking, and the amount so fixed should not be less than the amount of the claim sued for. Gordon v. Kerr, 53 Idaho 106, 21 P.2d 930 (1933).

Suits on Bonds.

Where there is no showing that the expense of employing counsel was incurred because of the attachment nor that it would not have been incurred had no attachment been levied, attorney's fees are not recoverable against the surety on the attachment bond on dissolution. Randall v. United States Fidelity & Guaranty Co., 53 Idaho 310, 23 P.2d 319 (1933).

Defendant in attachment must first recover judgment against the plaintiff in attachment, and a defendant in replevin must first cover judgment against the plaintiff in replevin for the return of the property, where the property has been seized, and then resort, without success, to plaintiff's attachment or replevin bond, as the case may be, before a cause of action accrues against the sheriff for failure to perform some duty in the premises imposed upon him by law, and these facts are jurisdictional. Oaks v. American Sur. Co., 58 Idaho 482, 76 P.2d 932 (1938).

Validity of Attachment.

Statement of amount in writ as greater sum than that stated in affidavit does not render attachment void or wrongful within meaning of statute. Taylor v. Fluharty, 35 Idaho 705, 208 P. 866 (1922).

Failure of affidavit to allege that action was not prosecuted to hinder, delay or defraud creditors constitutes merely an irregularity and does not render proceedings wrongful within meaning of statute. Taylor v. Fluharty, 35 Idaho 705, 208 P. 866 (1922).

Term "wrongful" within meaning of this section relates to issuance of attachment upon cause of action not included in § 8-501 or to cases where statements in affidavit are false, rather than to mere irregularities in papers. Taylor v. Fluharty, 35 Idaho 705, 208 P. 866 (1922).

Clerk could not issue second writ of attachment based on undertaking in first attachment where first attachment was declared void. Rougle v. Turk, 76 Idaho 427, 283 P.2d 915 (1955).

Cited Gatward v. Wheeler, 10 Idaho 66, 77 P. 23 (1904); First Nat'l Bank v. Denbrae Sheep Co., 44 Idaho 447, 258 P. 365 (1927); Bannock Title Co. v. Lindsey, 86 Idaho 583, 388 P.2d 1011 (1963); Valley Bank v. Dalton, 110 Idaho 87, 714 P.2d 56 (Ct. App. 1985); Sinclair & Co. v. Gurule, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 492 et seq.

C.J.S. — 7 C.J.S., Attachment, § 138 et seq.

§ 8-504. Form of writ. — The writ of attachment shall be directed to the sheriff of any county in which property of such defendant may be located, and must require him to attach and safely keep all the property of such defendant, within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demands, the amount of which must be stated in conformity with the complaint. If issued prior to hearing under paragraph (2) or (3) of subsection (c), section 8-503 [8-502], Idaho Code, the writ shall describe the specific property to be levied upon. If the court has directed the order in which the writ shall be levied upon different assets of the defendant under subsection (e), section 8-502, Idaho Code, the writ shall set forth such directions. There shall be attached to the writ a copy of the written undertaking filed by the plaintiff, and such writ shall inform the defendant that he has the right to except to the sureties upon such undertaking or to file a written undertaking for the redelivery of such property, as provided in section 8-506C, Idaho Code. Several writs may be issued at the same time to the sheriffs of different counties, and the plaintiff may have other writs of attachment as often as he may require at any time before judgment, without further notice to the defendant.

History.

C.C.P. 1881, § 321; R.S., R.C., & C.L., § 4305; C.S., § 6782; I.C.A., § 6-504; am. 1974, ch. 307, § 5, p. 1793.

STATUTORY NOTES

Cross References.

Court seal to be affixed to writs, § 1-1616.

Discharge of writ when lien lost, § 8-538.

Nonjudicial days, writs of attachment may be issued and served on, § 1-1607.

Separate property exempt from execution on spouse's separate debt, § 11-204.

Compiler's Notes.

The bracketed reference to § 8-502 near the beginning of the second sentence was inserted by the compiler to correct the reference.

CASE NOTES

Delay in issuing execution.

Effect of bankruptcy.

Issuance of execution.

Lien on pledged property.

Limitation of actions.

Statutory bond.

Substantial compliance required.

Delay in Issuing Execution.

Failure of judgment creditor to take out an execution against the judgment debtor within the 16 days between the date of the judgment and the date on which the debtor filed his petition in bankruptcy did not preclude the creditor from urging that the debtor's bankruptcy relieved him of the duty of taking out an execution against the debtor as a "condition precedent" to action against the sureties on the bond given to discharge the writ of attachment. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Effect of Bankruptcy.

The issuance and return of an execution against the judgment debtor, as required by statute, is not a "condition precedent" to an action against surety on a bond given to discharge writ of attachment, where the debtor was adjudicated a bankrupt. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Issuance of Execution.

The issuance and return of an execution, unsatisfied in whole or in part, is a "condition precedent" to the maintenance of an action on an undertaking given for release of writ of attachment. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Lien on Pledged Property.

Service of notice of garnishment on pledgee gives plaintiff in action of attachment against owner lien on pledged property. Federal Reserve Bank v. Smith, 42 Idaho 224, 244 P. 1102 (1926), overruled on other grounds, Helgeson v. Powell, 54 Idaho 667, 34 P.2d 957 (1934).

Limitation of Actions.

Statute of limitations begins to run against a bond given under §§ 8-503, 8-504 immediately on the return of the execution, and the return must be made within a reasonable time. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Statutory Bond.

A bond given to a sheriff to discharge a writ of attachment before the sheriff had completed the attachment thereunder was a "statutory bond." Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Substantial Compliance Required.

The statute authorizing the discharge of a writ of attachment upon an execution of an undertaking grants provisional remedies and must be substantially complied with. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Cited First Nat'l Bank v. Lieuallen, 4 Idaho 431, 39 P. 1108 (1895); Williams v. Olden, 7 Idaho 146, 61 P. 517 (1900).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 226 et seq.

C.J.S. — 7 C.J.S., Attachment, § 177 et seq.

§ 8-505. Property subject to attachment — Sale under execution. — The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon and all debts due such defendant, and all other property in this state of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

History.

C.C.P. 1181, § 322; R.S., R.C., & C.L., § 4306; C.S., § 6783; I.C.A., § 6-505.

STATUTORY NOTES

Cross References.

Exemptions from executions, § 11-204.

CASE NOTES

Child Support Action.

Since Idaho statutes authorized substitute service in an action against a nonresident for debt, and service being essential to the maintenance of such an action, the court did not err in denying the motion to quash service of summons secured by substitute service on a nonresident husband in an action by divorced wife to recover past due installments of child support on the ground that the action was not in rem. Skillern v. Ward, 79 Idaho 350, 317 P.2d 1050 (1957).

Cited Wells v. Price, 6 Idaho 490, 56 P. 266 (1899).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 69 et seq.

C.J.S. — 7 C.J.S., Attachment, § 64 et seq.

ALR. — Joint bank account as subject to attachment, garnishment, or execution by creditor of one joint depositor. 86 A.L.R.5th 527.

§ 8-506. Execution of writ. — The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section 8-506C, Idaho Code, be not given, as follows:

1. Real property standing upon the records of the county in the name of the defendant must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property attached and a notice that it is attached.

2. Real property or an interest therein belonging to the defendant and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached. The recorder must index such attachment, when filed, in the names of both, of the defendant and of the person by whom the property is held or in whose name it stands on the records.

3. Personal property capable of manual delivery must be attached by taking it into custody.

4. Stock or shares, or interest in stock or shares, of any corporation or company must be attached by leaving with the president or other head of the same, or the secretary, cashier or other managing agent thereof, a copy of the writ and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ; provided, that securities as defined in section 28-8-102, Idaho Code, must be attached as provided in section 28-8-112, Idaho Code.

5. Debts and credits and other personal property not capable of manual delivery must be attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control, belonging to the defendants, are attached in pursuance of such writ.

History.

C.C.P. 1881, § 323; R.S. & R.C., § 4307; am. 1911, ch. 162, § 1, p. 559; reen. C.L., § 4307; C.S., § 6784; I.C.A., § 6-506; am. 1974, ch. 307, § 6, p. 1793; am. 1998, ch. 243, § 1, p. 802.

STATUTORY NOTES

Cross References.

Bank operating branches or more than one officer receiving deposits, service of writ on, § 8-507.

Delivery of writ of sheriff to successor on expiration of time of office, § 31-2223.

Discharge of writ when lien lost, § 8-538.

Officer must exhibit process on demand, § 31-2214.

Sheriff is justified by and must execute process regular on its face, notwithstanding defects in proceedings, § 31-2213.

Sheriff must endorse time of reception on process, § 31-2202.

Sheriff's fee for attachment on property, § 31-3203; for preserving property under attachment, § 31-3203.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Action against sheriff.

Attachment against nonresident.

Levy and lien.

Mandatory procedure.

Personal property.

Real property.

Shares of stock.

Validity of officer's return.

Action Against Sheriff.

Where it does not appear that the sheriff knew that the cattle were not subject to attachment, the cause of action against the sheriff did not accrue until the receiver made demand for the possession of the cattle and the sheriff refused to comply with the demand. Oaks v. American Sur. Co., 58 Idaho 482, 76 P.2d 932 (1938).

Attachment Against Nonresident.

While attachment of all of nonresident's property within jurisdiction of court will not support personal judgment against such nonresident upon whom personal service has not been had, where property has been attached, such attachment brings property into jurisdiction and judgment entered in such case is good as to property attached. Sunderlin v. Warner, 42 Idaho 479, 246 P. 1 (1926).

In suit attacking validity of attachment and judgment against nonresident defendant by defendant's children on ground that children were owners of realty involved, defendant in attachment was not a necessary party. Welch v. Morris, 49 Idaho 781, 291 P. 1048 (1930).

Levy and Lien.

The right of attachment is purely of statutory regulation, and, where the statute provides the procedure in such cases, the plaintiff is required to pursue such cause in order to sustain his action against the garnishee. Eagleson v. Rubin, 16 Idaho 92, 100 P. 765 (1909).

A lien of attachment, even if valid by reason of having been made in substantial compliance with this section, is lost when the attaching officer or keeper permits one claiming the right of possession thereof to take and retain possession of the same, since the lien of the attaching creditor is dependent upon continuance of the possession by the attaching officer. American Fruit Growers, Inc. v. Walmstad, 44 Idaho 786, 260 P. 168 (1927).

When an officer proceeds to execute an attachment, he is authorized to seize any personalty found in the defendant's possession, if he has no reason to suppose it to be the property of another; if an officer knows when

he attaches personal property that it does not belong to the defendant, the attachment is at once necessarily wrongful. Oaks v. American Sur. Co., 58 Idaho 482, 76 P.2d 932 (1938).

Mandatory Procedure.

This section provides a mandatory procedure for levying on real property pursuant to a writ of execution as well as a writ of attachment. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

Personal Property.

An attachment on logs in and on the banks of a stream is sufficiently levied by sheriff's taking possession of the logs on the banks and employing men to catch and bank remainder of the logs. Falk-Bloch Mercantile Co. v. Branstetter, 4 Idaho 661, 43 P. 571 (1896).

Tangible property susceptible of manual seizure and delivery must, on attachment, be actually seized and taken into possession by the levying officer, who must maintain actual custody and control of property by such means as will exclude others from such custody. American Fruit Growers, Inc. v. Walmstad, 44 Idaho 786, 260 P. 168 (1927).

A warehouse is "personal property not capable of manual delivery." Quarles v. Citizens' Nat'l Bank, 31 F.2d 40 (9th Cir. 1929).

An action for damages for trespass to the personal property of the plaintiff did not depend upon the validity of the attachment proceedings against the debtor nor upon the validity of any purported attachment lien in favor of the creditor, it being sufficient in this case that the officer and the attorney for the creditor, armed with the summons and writ of attachment actually ousted the plaintiff from the possession and control of the truck and peaches, such being an invasion of the defendant's right of property for which defendant was liable whether the officer and attorney perfected an attachment lien or not. Jaquith v. Stanger, 79 Idaho 49, 310 P.2d 805 (1957).

Real Property.

The filing of a notice of levy, together with a copy of the writ and description of the property attached, is a sufficient levy of attachment on real property. First Nat'l Bank v. Lieuallen, 4 Idaho 431, 39 P. 1108 (1895).

Description of property must be sufficient to give notice to a reasonably prudent man of identity of property attached. First Nat'l Bank v. Sonnelitner, 6 Idaho 21, 51 P. 993 (1898).

Personal notice to the defendant is not equivalent to posting copies in a conspicuous place on the land and is insufficient to create a lien upon the property. Williams v. Olden, 7 Idaho 146, 61 P. 517 (1900).

The presumption of law is that party in possession is the representative of defendant who is owner of land, and that notice to him that the land is attached will reach owner. Foore v. Simon Piano Co., 18 Idaho 167, 108 P. 1038 (1910).

Filing of copy of writ of attachment, description of real property alleged to have been attached, and notice of attachment is absolutely necessary to constitute a lawful levy upon real estate. Long v. Burley State Bank, 30 Idaho 392, 165 P. 1119 (1917).

Attachment against realty, which at time thereof had been conveyed by recorded deed from defendant's mother, was void where statutory notice had not been filed. Welch v. Morris, 49 Idaho 781, 291 P. 1048 (1930).

Where a judgment becomes a lien against real property, it is necessary to levy upon the property by recordation of a writ of execution. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

Shares of Stock.

Shares of stock in a corporation can only be subjected to a debt by seizure under attachment or execution as provided by statute and do not pass on sale under execution of land irrigated by company by which stock is issued. Wells v. Price, 6 Idaho 490, 56 P. 266 (1899).

Where stock has been pledged and transferred by endorsement and delivery, but the transfer is not entered on the books, a subsequent attachment issued at instance of a creditor of pledgor is valid only against interest of pledgor remaining after payment of the debt to pledgee. Mapleton Bank v. Standrod, 8 Idaho 740, 71 P. 119 (1902).

Shares of stock in irrigation project are merely incidental to the ownership of water rights and are subject to lien of levy on land as

appurtenant thereto. Bothwell v. Keefer, 53 Idaho 658, 27 P.2d 65 (1933).

Validity of Officer's Return.

Evidence relative to possession of property alleged to have been attached was sufficient to conclusively impeach the attaching officer's return showing attachment of the property by taking it into his possession and placing a keeper in charge thereof. American Fruit Growers, Inc. v. Walmstad, 44 Idaho 786, 260 P. 168 (1927).

Cited Gem State Lumber Co. v. Galion Irrigated Land Co., 55 Idaho 314, 41 P.2d 620 (1935).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 284 et seq.

C.J.S. — 7 C.J.S., Attachment, § 203 et seq.

Idaho Code § 8-506A

§ 8-506A. Attachment of a debtor's interest in personal property subject to security agreement — Attachment of defendant's interest in mortgage or trust deed — Attachment of defendant's interest in security agreement. — Personal property subject to a security interest, a defendant's equity of redemption in personal property and a defendant's interest in a real estate mortgage or deed of trust or as secured party under a security agreement may be attached by the following methods, and no other:

(a) Personal property capable of manual delivery may be attached by taking possession, provided all secured parties with a perfected security interest therein under the Idaho uniform commercial code consent thereto in writing, and the attachment shall be subject to the rights of any secured party under a perfected security agreement, but otherwise would be to the same effect and in the same manner as if the property were not subject to the security agreement.

(b) If any secured party with a perfected security interest does not consent in writing that the sheriff take possession of the personal property, the attaching creditor must pay or tender to the secured party the amount due on the security agreement before the officer may take the property into possession. The attaching creditor upon so redeeming shall be subrogated to the rights of the secured party under the security agreement, and the secured party shall, upon payment or tender assign the security agreement, note or notes so paid, and any filed financing statements to the attaching creditor. Upon any sale by judicial proceedings, any amounts owing to the attaching creditor on the security agreement so redeemed, with lawful interest thereon, shall first be paid to the attaching creditor.

(c) If the attaching creditor so elects and instructs the sheriff, the equity of redemption of the defendant in the personal property subject to a perfected security agreement shall be attached. Such attachment is made by serving upon the secured party, upon the defendant, and upon the person in possession of the property, if other than the defendant or secured party, if said parties can be found within the county where the property is situated, a copy of the writ of attachment, together with a notice signed by the sheriff,

describing the property attached, giving the name of the secured party, and stating the interest of the defendant in the property attached, and by causing the notice to be filed in the office where a security agreement or financing statement on said property should be filed to perfect the security according to the Idaho uniform commercial code or other applicable law. The sheriff shall make the filing by mail if in an office outside his county, and shall also file with the notice in any office where a financing statement should be filed for the property, a financing statement describing the property attached, the prior security agreement, and signed by the attaching creditor or his agent as secured party and for the defendant as debtor by the sheriff. The filing officer shall receive and file the financing statement and index the same pursuant to part 5, chapter 9, title 28, Idaho Code. Service and filing as above provided shall operate as an attachment of the property described in the notice, subject to the prior rights of the secured party under the security agreement; possession of the property shall not be taken by the sheriff. Compliance with the foregoing is constructive notice to the world of the attachment. Provided, however, that this section shall not be constructive notice to a bona fide purchaser for value of any motor vehicle who has actual or constructive possession of the vehicle and who has relied on the certificate of title for determination by said purchaser as to secured parties shown thereon; nothing in this section shall relieve any person from complying with section 49-504, Idaho Code.

When the sale of such property attached under this subsection (c) is made on writ of execution obtained by such creditor, the proceeds must be applied as in the case of any other execution sale. The purchaser at any such sale acquires all title and rights of the judgment debtor in the property sold, as of the time the attachment was levied, subject to the perfected security agreement including all liens if any thereunder, securing obligations to be created after the security agreement was made in cases where such obligations have actually been created, and are by law entitled to priority over attaching creditors, and is entitled to the possession of such property subject, however, to the rights of the secured party.

Any transfer of encumbrance of the attached interest of the debtor-defendant is void as against the attaching creditor, but this provision shall not be construed as forbidding or invalidating any transfer or disposition of

the property lawfully made pursuant to the prior security agreement, or any other right exercised or acquired thereunder.

(d) Any interest of the defendant as mortgagee of a real estate mortgage or beneficiary of a trust deed on real estate whether held directly or as an assignee, may be attached. The sheriff must record with the county recorder where the real property is located a copy of the writ along with a notice in writing, naming the defendant, describing the real property, and identifying the recording information on the real estate mortgage or trust deed, and stating that the defendant's interest therein is attached, and by serving copies of the notice and writ upon the defendant and upon the mortgagor of the mortgage or trustor of the trust deed if they can be located within the county where the property is located. The recorder shall index the same as an assignment of the defendant's interest in the mortgage or deed of trust, and it shall be constructive notice to the world of the attachment. The attachment shall be subject to the rights of a holder in due course of a note or notes secured by the mortgage or trust deed, whether acquired before or after the attachment.

(e) Any interest of the defendant as secured party of a security agreement, whether held directly or as an assignee, shall be attached by the sheriff filing with the filing office where the security agreement or financing statement pursuant thereto is or should by law be filed, a copy of the writ along with a notice in writing, naming the defendant, describing the property listed in the financing statement or filed security statement, identifying the parties to the security agreement, and stating that the defendant's interest therein is attached. The sheriff shall serve a copy of the notice and writ upon the defendant and upon the debtor under the security agreement, if they can be located within the county where the property is located. The sheriff may file the copy of the writ or notice by mail if the filing officer is outside the county. The filing officer shall index the same as an assignment of the defendant's interest in the security agreements, and it shall be constructive notice to the world. The attachment shall be subject to the rights of a holder in due course of a note or notes secured by the security agreement, whether acquired before or after the attachment.

History.

I.C., § 8-506A, as added by 1969, ch. 461, § 1, p. 1294; am. 1975, ch. 171, § 1, p. 463; am. 1988, ch. 265, § 560, p. 549; am. 2001, ch. 208, § 26, p. 704.

STATUTORY NOTES

Compiler's Notes.

The Idaho uniform commercial code, referred to in this section, is compiled in chs. 1 to 12 of title 28, Idaho Code.

Effective Dates.

Section 31 of S.L. 2001, ch. 208 provided that the act should take effect on and after July 1, 2001.

§ 8-506B. Service of writ. — The sheriff shall, without delay serve upon the defendant a copy of the writ of attachment and written undertaking by delivering the same to him personally, if he can be found, or to his agent from whom possession of the property is taken; or, if neither can be found, by leaving them at the issued place of abode of either with some person of suitable age and discretion; or, if neither have a place of abode, by mailing them to their last known address.

History.

I.C., § 8-506B, as added by 1974, ch. 307, § 7, p. 1793.

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 284 et seq.

C.J.S. — 7 C.J.S., Attachment, § 221 et seq.

§ 8-506C. Defendant's undertaking — Return of property. — At any time the defendant may retain or require the return of all or any portion of the property upon filing with the court a written undertaking executed by two (2) or more sufficient sureties, to the effect that they are bound in an amount sufficient to satisfy the plaintiff's claims, besides costs, or in an amount equal to the value of the specific property sought to be retained or returned which has been or is about to be attached. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or his attorney a notice of filing such undertaking, to which a copy of such undertaking shall be attached; and shall cause proof of service thereof to be filed with the court.

If such undertaking is in an amount sufficient to satisfy the plaintiff's claims, besides costs, proceedings thereunder shall terminate, unless exception is taken to such sureties. If, at the time of filing of such undertaking in an amount sufficient to satisfy the plaintiff's claims, plus costs, the property shall be in the custody of the sheriff, such property, together with all proceeds of the sales thereof, shall be returned to the defendant five (5) days after service of the notice of filing such undertaking upon plaintiff or his attorney, unless exception is taken to such sureties.

If such undertaking is filed in an amount equal to the value of the specific property sought to be retained or returned and the court has previously determined the proper sum to be specified in such undertaking as provided in subsection (e), section 8-502, Idaho Code, the sheriff shall not execute the writ as to the specific property covered by such undertaking. If the property shall be in the custody of the sheriff, the property shall be returned to defendant five (5) days after service of the notice of filing such undertaking upon plaintiff or his attorney unless exception is taken to such sureties. If such undertaking filed in an amount equal to the value of the property sought to be returned and the court has not previously determined the proper amount to be specified in the undertaking pursuant to subsection (e), section 8-502, Idaho Code, the plaintiff may within four (4) days after service of the notice of filing give written notice to the court, the defendant, and the sheriff, if such property shall then be in the custody of the sheriff, that he objects to the amount of the undertaking. If he fails to do so, he is

deemed to have waived all objections thereto and the sheriff shall not execute the writ as to the specific property covered by such undertaking, or if such property shall then be in the custody of the sheriff, it shall be returned to the defendant five (5) days after service of the notice of filing such undertaking upon plaintiff or his attorney. If the plaintiff objects to the amount of such undertaking, the court shall set the matter for hearing and upon examination of the evidence and testimony submitted and such other evidence or testimony as the judge may thereupon require, the court shall determine the proper amount to be specified in such undertaking. If the amount of the undertaking filed be found sufficient, or if the defendant file a new undertaking in such amount as fixed by the court, the property shall be returned to the defendant, unless exception is taken to such sureties on any new undertaking filed by defendant.

History.

I.C., § 8-506C, as added by 1974, ch. 307, § 8, p. 1793.

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 226 et seq.

C.J.S. — 7 C.J.S., Attachment, § 345 et seq.

§ 8-506D. Sufficiency of sureties. — The qualification of sureties under any written undertaking referred to in this chapter shall be such as prescribed by the code in respect to bail upon an order of civil arrest. Either party may, within two (2) days after service of an undertaking or notice of filing an undertaking under the provisions of this chapter, give written notice to the court, the other party and the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When a party excepts, the other party's sureties shall justify on notice within not less than two (2), nor more than five (5) days, in like manner as upon bail upon civil arrest. If any of the defendant's property be in the custody of the sheriff, he shall retain custody thereof until the justification is completed or waived or fails. If the sureties for the plaintiff's undertaking, filed pursuant to section 8-503, Idaho Code, fail to justify, the writ of attachment must be vacated and the sheriff shall return the property to the defendant. If the sureties for the defendant's undertaking, filed pursuant to section 8-506C, Idaho Code, fail to justify, the sheriff shall proceed as if no such undertaking had been filed. If the sureties justify or the exception is waived, the sheriff shall proceed as if no such exception had been filed.

History.

I.C., § 8-506D, as added by 1974, ch. 307, § 9, p. 1793.

STATUTORY NOTES

Cross References.

Arrest in civil cases, § 8-01 et seq.

Bail upon civil arrest, § 8-109.

Compiler's Notes.

The reference to "the code" in the first sentence is to the Code of Civil Procedure, a division of the Idaho Code, consisting of titles 1 through 13.

§ 8-507. Applicability. — To the extent that the provisions of chapter 7, title 11, Idaho Code, are not inconsistent with the provisions of this chapter, such provisions shall apply to the attachment process.

History.

I.C., § 8-507, as added by 2017, ch. 303, § 3, p. 799.

STATUTORY NOTES

Cross References.

Debtor of judgment debtor may satisfy execution, § 11-503.

Debts owing by state of Idaho subject to execution or garnishment after judgment, § 11-202.

Discharge of writ when lien lost, § 8-538.

Supplementary proceedings against debtor of defendant's debtor, stay of transfer of property, § 11-507.

Prior Laws.

Former § 8-507, Garnishment — Service of writ of attachment, execution, or garnishment — Banks, which comprised C.C.P. 1881, § 324; R.S., R.C., & C.L., § 4308; C.S., § 6785; am. 1921, ch. 202, § 1, p. 409; I.C.A., § 6-507; am. 1935, ch. 78, § 1, p. 132; am. 1991, ch. 165, § 1, p. 395; am. 1995, ch. 330, § 1, p. 1099; am. 2003, ch. 158, § 1, p. 446, was repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017.

CASE NOTES

County sheriffs.

Lien acquired by service.

Service by mail.

Suit against garnishee.

County Sheriffs.

County sheriffs were properly named as defendants in a suit challenging the constitutionality of Idaho's postjudgment garnishment procedures because they had the statutory duty to enforce and administer allegedly unconstitutional state statutes. Chaloux v. Killeen, 886 F.2d 247 (9th Cir. 1989).

Lien Acquired by Service.

Plaintiff in attachment obtains lien on pledged property of defendant in hands of pledgee upon service of notice upon latter. Federal Reserve Bank v. Smith, 42 Idaho 224, 244 P. 1102 (1926), overruled on other grounds, Helgeson v. Powell, 54 Idaho 667, 34 P.2d 957 (1934).

By service in manner provided by statute, while possession is not necessarily disturbed, lien is obtained on debtor's title to property in hands of garnishee. Sullivan v. Maybey, 45 Idaho 595, 264 P. 233 (1928).

Service by Mail.

Divorce decree, in which husband was awarded all the equity in the homestead subject to an obligation to pay the wife a portion of her equity, divested the wife of her real property interest in the house and converted it into a lien, which was a personal property interest. Therefore, the wife was not entitled to relief from a sheriff's sale of the homestead arising from her failure to make certain payments to the husband because she was provided notice via mail for an execution against personal property. Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

Suit Against Garnishee.

Where garnishee is sued upon notes which are property of a defendant in the attachment suit and were transferred to plaintiff in suit against garnishee to defeat and defraud creditors of defendant in attachment suit, the suit against garnishee should be suspended until garnishee's liability in attachment suit is determined. Van Ness v. McLeod, 3 Idaho 439, 31 P. 798 (1892).

Right of attachment is of purely statutory regulation, and where statute provides procedure in such cases, plaintiff must pursue such course in order to sustain his action against garnishee. Eagleson v. Rubin, 16 Idaho 92, 100 P. 765 (1909).

Cited Lindenthal v. Burke, 2 Idaho 571, 21 P. 419 (1889); Simpson v. Remington, 6 Idaho 681, 59 P. 360 (1899); City of Idaho Falls v. Pfost, 53 Idaho 247, 23 P.2d 245 (1933).

RESEARCH REFERENCES

ALR. — Funds deposited in court as subject of garnishment. 1 A.L.R.3d 936.

Issue in garnishment as triable to court or to jury. 19 A.L.R.3d 1393.

Liability insurer's potential liability for failure to settle claim against insured as subject to garnishment by insured's judgment creditors. 60 A.L.R.3d 1190.

Garnishment against executor or administrator by creditor of estate. 60 A.L.R.3d 1301.

§ 8-507A. Service on defendant and third parties by sheriff. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

I.C., § 8-507A, as added by 1991, ch. 165, § 2, p. 395; am. 1995, ch. 330, § 2, p. 1099.

§ 8-507B. Service on defendant and third parties by bank or depository institution. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

I.C., § 8-507B, as added by 1991, ch. 165, § 3, p. 395; am. 1995, ch. 330, § 3, p. 1099.

§ 8-507C. Forms. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

I.C., § 8-507C, as added by 1991, ch. 165, § 4, p. 395; am. 1998, ch. 73, § 1, p. 267; am. 2000, ch. 231, § 1, p. 645; am. 2003, ch. 44, § 1, p. 167; am. 2012, ch. 107, § 1, p. 284.

§ 8-507D. Documents to be provided by plaintiff — Duties of sheriff — Service and mailing criteria — Time computation. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

I.C., § 8-507D, as added by 1991, ch. 165, § 5, p. 395; am. 1994, ch. 27, § 1, p. 44; am. 2003, ch. 158, § 2, p. 446.

§ 8-508. Liability of garnishee. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

C.C.P. 1881, § 325; R.S., R.C., & C.L., § 4309; C.S., § 6786; I.C.A., § 6-508.

§ 8-509. Examination of garnishee. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

C.C.P. 1881, § 326; R.S., R.C., & C.L., § 4310; C.S., § 6787; am. 1921, ch. 202, § 1, p. 409; I.C.A., § 6-509; am. 1985, ch. 143, § 1, p. 388; am. 1989, ch. 215, § 1, p. 523; am. 1991, ch. 165, § 6, p. 395.

§ 8-510. Notice of garnishment — Discharge of garnishee. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 1; reen. R.C. & C.L., § 4310a; C.S., § 6788; I.C.A., § 6-510.

§ 8-511. Interrogatories submitted to garnishee. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 2; reen. R.C. & C.L., § 4310b; C.S., § 6789; I.C.A., § 6-511.

§ 8-512. Answer to interrogatories — Judgment against garnishee. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 3; reen. R.C. & C.L., § 4310c; C.S., § 6790; I.C.A., § 6-512.

§ 8-513. Exception to answer — Amendment. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 4; reen. R.C. & C.L., § 4310d; C.S., § 6791; I.C.A., § 6-513.

§ 8-514. Denial of answer — Replication — Trial, judgment, and execution. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 5; reen. R.C. & C.L., § 4310e; C.S., § 6792; I.C.A., § 6-514.

§ 8-515. Judgment on answer — Costs and allowances. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 6; reen. R.C. & C.L., § 4310f; C.S., § 6793; I.C.A., § 6-515.

§ 8-516. Judgment against garnishee. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 7; reen. R.C. & C.L., § 4310g; C.S., § 6794; I.C.A., § 6-516.

§ 8-517. Allegation of assignment of debt — Procedure. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 8; reen. R.C. & C.L., § 4310h; C.S., § 6795; I.C.A., § 6-517.

§ 8-518. Allegation of assignment of debt — Trial of issue. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 9; reen. R.C. & C.L., § 4310i; C.S., § 6796; I.C.A., § 6-518.

§ 8-519. Claim of exemption by defendant. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 10; reen. R.C. & C.L., § 4310j; C.S., § 6797; I.C.A., § 6-519.

§ 8-520. Liability of garnishee on negotiable paper. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 11; reen. R.C. & C.L., § 4310k; C.S., § 6798; I.C.A., § 6-520.

§ 8-521. Liability of officers and executors as garnishees. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 12; reen. R.C. & C.L., § 4310*l*; C.S., § 6799; I.C.A., § 6-521.

§ 8-522. Appeals in garnishment proceedings. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 13; reen. R.C. & C.L., § 4310m; C.S., § 6800; I.C.A., § 6-522.

§ 8-523. Application of preceding sections. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 2, effective July 1, 2017. For provisions on garnishments, see § 11-701 et seq.

History.

1907, p. 158, § 14; reen. R.C. & C.L., § 4310n; C.S., § 6801; I.C.A., § 6-523.

§ 8-524. Inventory and memorandum of attached property. — The sheriff must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to the debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each, and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the cost of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

History.

C.C.P. 1881, § 327; R.S., R.C., & C.L., § 4311; C.S., § 6802; I.C.A., § 6-524.

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 293 et seq.

C.J.S. — 7 C.J.S., Attachment, §§ 217, 218.

§ 8-525. Sale of perishable property — Collection of debts. — If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing of the attachment. Debts and credits attached may be collected by him if the same can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

History.

C.C.P. 1881, § 328; R.S., R.C., & C.L., § 4312; C.S., § 6803; I.C.A., § 6-525.

STATUTORY NOTES

Cross References.

Payment to sheriff discharges garnishee's debt, § 8-510.

Sales on execution, § 11-302.

CASE NOTES

Sale of Perishable Property.

Sheriff has no right to assume to sell attached property as perishable without an order of the court, which order must be predicated upon a sworn statement by sheriff showing character of property claimed to be perishable and amount thereof. Work v. Kinney, 5 Idaho 716, 51 P. 745 (1898).

§ 8-526. Order for sale of property in interest of parties. — Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactory to the court, or a judge thereof, that the interests of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. Such an order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

History.

C.C.P. 1881, § 329; R.S., R.C., & C.L., § 4313; C.S., § 6804; I.C.A., § 6-526.

STATUTORY NOTES

Cross References.

Sales under execution, § 11-302 et seq.

CASE NOTES

Cited Anderson v. Ferguson, 56 Idaho 554, 57 P.2d 325 (1936).

RESEARCH REFERENCES

C.J.S. — 7 C.J.S., Attachment, § 392 et seq.

§ 8-527. Claim of property by third person or as exempt. — If any personal property attached, garnished or executed upon be claimed by a third person as his property, or by the defendant as exempt property, the same rules shall prevail as to the contents and making of said claim, and as to the holding of said property, as in the case of a claim after levy upon execution, as provided in section 11-203, Idaho Code.

History.

C.C.P. 1881, § 330; R.S. & R.C., § 4314; am. 1913, ch. 109, § 11, p. 430; reen. C.L., § 4314; C.S., § 6805; I.C.A., § 6-527; am. 1939, ch. 12, § 1, p. 28; am. 1991, ch. 165, § 7, p. 395.

CASE NOTES

Bond.

Where a sheriff levied on personal property under attachment, and, while holding under such levy, received a second attachment, and levied on the same property under the second attachment, and afterwards, but before sale on either a third person claimed the property, the second attaching creditor indemnified the sheriff against loss under the second attachment, and the sheriff sold under execution in the first attachment suit, and paid all the proceeds to the first attaching creditor, the claimant of the property having recovered of the sheriff the value of the property sold, held: (1) that the sheriff could not recover on the indemnifying bond of the second attaching creditor; (2) that since the complaint did not claim, nor the proof show, that after the levy the sheriff did any act under the second attachment, the second attaching creditor was not liable; (3) that in such case, when plaintiff had rested, it was not error for the court to instruct the jury to find for the defendant; (4) and that in such case, the effect of an indemnifying bond must be determined by its own conditions. Fury v. White, 2 Idaho 662, 23 P. 535 (1890).

Where an attaching plaintiff never was put to the burden of indemnifying the sheriff because the parties stipulated that the third party could substitute a bond for the value of the automobile in question with the bond to be held

by the sheriff in place of the vehicle, the sheriff was relieved of any potential liability to the third party for which indemnity would be sought from the attaching plaintiff and the reason for requiring verification of the claim did not exist and the provisions of § 11-203 and this section were not applicable; thus, the lack of verification did not bar the subsequent judicial proceeding to determine the third party's claim to the car. Slayton v. Zapp, 108 Idaho 244, 697 P.2d 1258 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 545 et seq.

C.J.S. — 7 C.J.S., Attachment, § 409 et seq.

§ 8-528. Sale of attached property to satisfy judgment. — If judgment be recovered by the plaintiff, the sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell, under the execution, so much of the property, real or personal as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sale must be given, and the sales conducted as in other cases of sales on execution.

History.

C.C.P. 1881, § 331; R.S., R.C., & C.L., § 4315; C.S., § 6806; I.C.A., § 6-528.

STATUTORY NOTES

Cross References.

Penalty for neglect or refusal of sheriff to pay over money, § 31-2207.

Sales on execution, § 11-302 et seq.

Sheriff's fee for advertising property for sale on attachment, § 31-3203.

§ 8-529. Collection of deficiency after sale — Delivery of surplus to defendant. — If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

History.

C.C.P. 1881, § 332; R.S., R.C., & C.L., § 4316; C.S., § 6807; I.C.A., § 6-529.

STATUTORY NOTES

Cross References.

Executions generally, § 11-301 et seq.

Penalty for neglect or refusal of sheriff to pay over money, § 31-2207.

Sheriff's commissions for receiving or paying over money on execution, § 31-3203.

CASE NOTES

Foreclosure of Chattel Mortgages.

Statutes relating to sale of attached property are not carried into law relating to summary foreclosure of chattel mortgages by reference or otherwise and have no application thereto. South Side Live Stock Loan Co. v. Iverson, 45 Idaho 499, 263 P. 481 (1928).

§ 8-530. Action on attachment bond. — If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section 8-506C, Idaho Code, or he may proceed as in other cases upon the return of an execution.

History.

C.C.P. 1881, § 333; R.S., R.C., & C.L., § 4317; C.S., § 6808; I.C.A., § 6-530; am. 1974, ch. 307, § 10, p. 1793.

STATUTORY NOTES

Cross References.

Supplementary proceedings, § 11-501 et seq.

CASE NOTES

Issuance of Execution.

The issuance and return of an execution, unsatisfied in whole or in part, is a "condition precedent" to the maintenance of an action on an undertaking given for release of writ of attachment. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 492 et seq.

C.J.S. — 7 C.J.S., Attachment, § 377 et seq.

§ 8-531. Discharge on judgment for defendant. — If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, must be delivered to the defendant or his agent. The order of attachment shall be discharged, and the property released therefrom.

History.

C.C.P. 1881, § 334; R.S., R.C., & C.L., § 4318; C.S., § 6809; I.C.A., § 6-531.

CASE NOTES

Construction.

Time dissolution takes effect.

Construction.

Under plain provisions of this section, judgment in favor of defendant dissolves attachment. Washington County v. Weiser Nat'l Bank, 43 Idaho 618, 253 P. 838 (1927).

Final judgment for defendant dissolved attachment irrespective of any reference thereto. Standlee v. Hawley, 50 Idaho 269, 295 P. 630 (1931).

Under the provisions of this section, standing alone, an attachment is discharged and becomes a nullity when judgment is entered in favor of defendant against the plaintiff in an action in which an attachment is a part thereof and all property that was attached must be delivered to the defendant or his agent. Sampson v. Layton, 86 Idaho 453, 387 P.2d 883 (1963).

Time Dissolution Takes Effect.

The court determined that the judgment for defendant in the justice's court operated as a dissolution of the attachment and released the attached property and the additional undertaking, not having been filed until seven days after the entry of the judgment, did not stay the self executing quality

of the judgment appealed from. Sampson v. Layton, 86 Idaho 453, 387 P.2d 883 (1963).

RESEARCH REFERENCES

C.J.S. — 7 C.J.S., Attachment, § 370 et seq.

§ 8-532. Discharge of attachment on giving bond. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 335; R.S., R.C., & C.L., § 4319; C.S., § 6810; I.C.A., § 6-532, was repealed by S.L. 1974, ch. 307, § 11.

§ 8-533. Undertaking — Amount — Appraisal of property — Justification of sureties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 336; R.S., R.C., & C.L., § 4320; C.S., § 6811; I.C.A., § 6-533, was repealed by S.L. 1974, ch. 307, § 12.

§ 8-534. Vacation of irregular attachment. — The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

History.

C.C.P. 1881, § 337; R.S., R.C., & C.L., § 4321; C.S., § 6812; I.C.A., § 6-534.

CASE NOTES

Amended affidavit.

Collateral attack not permitted.

Damages for wrongful attachment.

Grounds for discharge.

Right not waived.

Right waived.

Valid when issued.

Amended Affidavit.

Where an amended affidavit for attachment showed that the original affidavit on which the attachment was issued was false in representing that the payment of the debt sued on had not been secured by a mortgage, in absence of a showing that the false statement in the original affidavit was made innocently, the trial judge was not bound to accept as true the amended affidavit stating that the security which had been given had become valueless. Casebeer v. Todd, 62 Idaho 702, 115 P.2d 746 (1941).

Collateral Attack Not Permitted.

Right to challenge truth of allegations of affidavit is given to defendant to be exercised in action. It can not be collaterally attacked, if good on its face,

except for fraud or collusion. Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

Where it appears from record that court has jurisdiction to issue attachment, stranger to action can not establish, in independent action, falsity of affidavit and, thereby, invalidate lien of attachment. Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

Damages for Wrongful Attachment.

One against whom an attachment has wrongfully issued is entitled to recover, as a part of his damages for the wrong, the expenses which he incurred in defending against such attachment. Moseley v. Fidelity & Deposit Co., 33 Idaho 37, 189 P. 862 (1920).

Grounds for Discharge.

The only grounds upon which an attachment can be discharged is that writ is improperly or illegally issued; that the property levied upon is exempt from execution or is a homestead is not ground for discharging the writ. Mason v. Lieuallen, 4 Idaho 415, 39 P. 1117 (1895).

The attachment will not be dissolved for mere irregularity in the issuance of the summons. Ridenbaugh v. Sandlin, 14 Idaho 472, 94 P. 827 (1908).

A motion to dissolve will not be turned into a demurrer. If complaint fails to state a cause of action, because facts pleaded are defectively stated, and it appears from complaint that a cause can be stated by amendment under the ordinary rules governing amendments, then on the hearing of the motion to dissolve, the amendment will be considered as having been made. If, however, complaint states no cause of action, then a motion to dissolve the attachment, on the ground that complaint fails to state facts sufficient to constitute a cause of action, will be considered and sustained. Ross v. Gold Ridge Mining Co., 14 Idaho 687, 95 P. 821 (1908).

An affidavit alleging two or more distinct grounds of attachment in the alternative is insufficient, because it is impossible to determine which ground is relied on to sustain the attachment. Heaton v. Panhandle Smelting Co., 32 Idaho 146, 179 P. 510 (1919).

Action for damages for trespass to personal property of plaintiff, namely ousting plaintiff from possession and control of his truck and contents was

not an action for wrongful attachment under § 8-503 nor a case in which plaintiff was entitled to appear in the probate court and move for dissolution pursuant to this section, the remedy and rights given by those sections being available only to defendant in the case in which attachment is issued. Jaquith v. Stanger, 79 Idaho 49, 310 P.2d 805 (1957).

Objection that writ is levied on separate property of wife could not be raised on motion to quash under this section. Objection that writ is levied on property in which defendant has no interest may be raised by the owner by petition in intervention setting forth facts sufficient to entitle intervenor to judgment, after a trial of the issues, removing cloud on her title. First Trust & Sav. Bank v. Randall, 57 Idaho 126, 63 P.2d 157 (1936).

Right Not Waived.

Even after the attached property has been redelivered to defendant upon bond, motion for discharge of attachment for irregularity will lie. Glidden v. Whittier, 46 F. 437 (C.C.D. Idaho 1891).

The release of attached property by defendant by the execution of a proper undertaking is not a waiver of defects in the original proceeding, and defendant may move for a discharge of the writ of attachment on the ground that same was irregularly or improperly issued, after the release of his property. Murphy v. Montandon, 3 Idaho 325, 29 P. 851 (1892).

Right Waived.

One against whom action is instituted and whose property is attached can not sit supinely by and, after judgment is entered, have attachment vacated merely because of falsity of affidavit. Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

Where appellants did not move to vacate or set aside the attachments, which they had the right to do if they felt the attachments were illegal, they were estopped after judgment was entered to seek damages for the attachments issued. Nalder v. Crest Corp., 93 Idaho 744, 472 P.2d 310 (1970).

Valid When Issued.

Where attachment was valid when issued, fact that ultimate judgment exceeded jurisdiction of court did not render attachment invalid or

wrongful. Nalder v. Crest Corp., 93 Idaho 744, 472 P.2d 310 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 408 et seq.

C.J.S. — 7 C.J.S., Attachment, § 476 et seq.

§ 8-535. Motion upon affidavit — How opposed. — If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

History.

C.C.P. 1881, § 338; R.S., R.C., & C.L., § 4322; C.S., § 6813; I.C.A., § 6-535.

CASE NOTES

Motion Without Affidavits.

Where the motion is not made on affidavits, the district judge is prohibited by this section from considering plaintiff's affidavit in opposition to the motion. Heaton v. Panhandle Smelting Co., 32 Idaho 146, 179 P. 510 (1919).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 408 et seq.

C.J.S. — 7 C.J.S., Attachment, § 476 et seq.

§ 8-536. Discharge — Amendments authorized. — If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged; provided that such attachment shall not be discharged if at or before the hearing of such application, the writ of attachment, or the affidavit, or undertaking upon which such attachment was based, shall be amended or made to conform to the provisions of this chapter.

History.

R.S., R.C., & C.L., § 4323; C.S., § 6814; am. 1921, ch. 160, § 1, p. 354; I.C.A., § 6-536.

CASE NOTES

Amended affidavit.

Construction in general.

Right waived.

Timeliness.

Amended Affidavit.

Where an amended affidavit for attachment showed that the original affidavit on which the attachment was issued was false in representing that the payment of the debt sued on had not been secured by mortgage, in absence of a showing that the false statement in the original affidavit was made innocently, the trial judge was not bound to accept as true the amended affidavit stating that the security which had been given had become valueless. Casebeer v. Todd, 62 Idaho 702, 115 P.2d 746 (1941).

Construction in General.

Prior to the amendment of this section in 1921, the affidavit for attachment could not be amended. Heaton v. Panhandle Smelting Co., 32 Idaho 146, 179 P. 510 (1919).

Under statute providing for amendment, defective statement of ground for attachment is generally held amendable. Bear Lake State Bank v.

Wilcox, 48 Idaho 147, 279 P. 1090 (1929).

Right Waived.

One against whom action is instituted and whose property is attached can not sit supinely by and, after judgment is entered, have attachment vacated merely because of falsity of affidavit. Mitchell v. Ada Inv. Co., 42 Idaho 421, 246 P. 10 (1926).

Where appellants did not move to vacate or set aside the attachments, which they had the right to do if they felt the attachments were illegal, they were estopped after judgment was entered to seek damages for the attachments issued. Nalder v. Crest Corp., 93 Idaho 744, 472 P.2d 310 (1970).

Timeliness.

Trial court correctly denied appellants' motion to strike respondent's amended affidavit for attachment, made by its treasurer on its behalf and in affirmative terms, not upon information and belief; no hearing having been held on appellants' amended motion to dissolve attachment when the amended affidavit was filed, it was sufficient and timely. Salt Lake Hdwe. Co. v. Steffler, 87 Idaho 383, 393 P.2d 607 (1964).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 400 et seq.

C.J.S. — 7 C.J.S., Attachment, § 274 et seq.

§ 8-537. Return of writ. — The sheriff must return the writ of attachment with the summons, if issued at the same time; otherwise within twenty (20) days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the county recorder in which the notice of attachment has been filed, and be indexed in like manner.

History.

C.C.P. 1881, § 340; R.S., R.C., & C.L., § 4324; C.S., § 6815; I.C.A., § 6-537.

STATUTORY NOTES

Cross References.

Completion and return of process after expiration of term of office, § 31-2225.

Penalty for failure to return, § 31-2205.

Sheriff's return is prima facie evidence of facts, § 31-2204.

CASE NOTES

Application in General.

After sheriff has filed return on garnishment proceedings he can not lawfully release property from garnishment. Federal Reserve Bank v. Smith, 42 Idaho 224, 244 P. 1102 (1926), overruled on other grounds, Helgeson v. Powell, 54 Idaho 667, 34 P.2d 957 (1934).

After sheriff has filed return on attachment, property is *in custodia legis* and any relief must be had by application to court, or express consent of plaintiff. Federal Reserve Bank v. Smith, 42 Idaho 224, 244 P. 1102 (1926), overruled on other grounds, Helgeson v. Powell, 54 Idaho 667, 34 P.2d 957 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 312 et seq.

C.J.S. — 7 C.J.S., Attachment, § 244 et seq.

§ 8-538. Discharge of lien on real estate. — Whenever in any action, real estate has been levied upon under writs, either of attachment or execution, and the lien of the writ has in any manner been lost or destroyed, the court out of which the writ issued or the judge thereof, may, on application by any person interested, make an order discharging said lien, and the order or a certified copy thereof may be filed in the office of the county recorder in which the notice of the levy has been filed, and indexed in like manner as said notice.

History.

1895, p. 14, § 1; reen. 1899, p. 233, § 1; reen. R.C. & C.L., § 4325; C.S., § 6816; I.C.A., § 6-538.

§ 8-539. Lien on real estate — Time effective — Duration — Termination — Extension. — Whenever in any action, real estate has been levied upon under writs, either of attachment or execution, such levy shall be a lien upon all real property for a period of two (2) years after the date of levy unless sooner released or discharged in accordance with law, or by dismissal of the action or by the recording with the recorder of an abstract of judgment in the action. At the expiration of two (2) years, the lien shall cease and any proceeding or proceedings against the property under the lien shall be barred; provided, that upon motion of a party to the action, made not less than five (5) nor more than sixty (60) days before the expiration of said period of two (2) years, the court in which the action is pending may extend the time of said lien for a period not exceeding two (2) years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the recording before the expiration of the existing lien, of a certified copy of the order with the recorder of the county in which the real property attached is situated. The lien may be extended from time to time in the manner herein prescribed.

History.

I.C., § 8-539, as added by 1965, ch. 93, § 1, p. 171.

CASE NOTES

Equitable right.

Expiration of writ.

Equitable Right.

A vendor's lien is not a specific and absolute charge on the realty but a mere equitable right to resort to it, i.e., the property on failure of payment by the vendee; thus, even if a judgment debtor did possess a vendor's lien in certain property he sold, he possessed no interest in the property which could be levied upon pursuant to this section by the judgment creditor. Estates of Somers v. Clearwater Power Co., 107 Idaho 29, 684 P.2d 1006 (1984).

Expiration of Writ.

Where original writ of attachment had expired, the judgment creditor was still entitled to enforce his judgment by a writ of execution within five years of the date of judgment pursuant to § 11-101. Williams v. Paxton, 98 Idaho 155, 559 P.2d 1123 (1976).

§ 8-540. Early setting. — In all proceedings brought under this chapter, all courts in which such actions are pending, shall, upon request of any party thereto, give such actions precedence over all other civil actions, except action to which special precedence is otherwise given by law, in the matter of setting the same for hearing or trial, or in hearing or trial thereof, to the end that all such actions shall be quickly heard and determined; provided, however, that hearing upon a motion to contest a claim of exemption or third party claim as provided in section 11-203, Idaho Code, shall be set for a date within not less than five (5) nor more than twelve (12) days after the filing of the motion and such hearing may be continued only at the request of the defendant.

History.

I.C., § 8-540, as added by 1974, ch. 307, § 13, p. 1793; am. 1991, ch. 165, § 8, p. 395.

STATUTORY NOTES

Effective Dates.

Section 14 of S.L. 1974, ch. 307 declared an emergency. Approved April 5, 1974.

Idaho Code Ch. 6

Chapter 6
RECEIVERS

Sec.

8-601. Grounds for appointment.

8-601A. Additional grounds for appointment of receivers.

8-602. Appointment upon dissolution of corporation.

8-603. Who may be appointed — Undertaking upon ex parte appointment — Additional undertaking.

8-604. Oath and bond of receiver.

8-605. Powers of receiver.

8-606. Investment of funds.

Idaho Code § 8-601

§ 8-601. Grounds for appointment. — A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff or of any party whose right to, or interest in, the property, or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

3. After judgment to carry the judgment into effect.

4. After judgment to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

5. In the case where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

5-A. A receiver for an irrigation district may be appointed in an action brought by bondholders or other creditors, water users, and/or land owners of such irrigation district, where it is made to appear to the satisfaction of the court that such irrigation district has failed to elect its officers, or such officers have failed to qualify or are not acting, or such district has ceased to function, or has been abandoned, or is insolvent, or is in imminent danger of insolvency, or is being grossly mismanaged, or has been or ought to be dissolved, and there are rights or properties of such irrigation district which

are threatened to become lost or dissipated, that should be preserved for the benefit of its creditors or other parties of interest in such irrigation district.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

History.

C.C.P. 1881, § 341; R.S. & R.C., § 4329; am. 1909, H.B. 60, § 1, p. 26; reen. C.L., § 4329; C.S., § 6817; am. 1929, ch. 43, § 1, p. 52; I.C.A., § 6-601.

STATUTORY NOTES

Cross References.

Banks, powers of director of department of finance upon taking possession of closed bank, § 26-1020.

Divorce, receivership as security for alimony, § 32-707.

Powers of receivers, § 8-605.

Reimbursement for premiums on bonds, § 41-2606.

Release of surety, § 41-2609.

CASE NOTES

Allegations required.

Allowances to receiver.

Appeal.

Appointment authorized.

Appointment not authorized.

Collateral attack.

Effect of appointment.

Foreclosure suit.

Jurisdiction to appoint.

Powers of receivers.

Trustees.

Allegations Required.

Appointment of receivers to take charge of real property should never be made until the moving party shows himself clearly entitled thereto; the court should not take charge of real estate through the aid of a receiver as against a party in possession asserting title in himself unless the property is shown to be in imminent danger of great waste or irreparable injury. Kelly v. Steele, 9 Idaho 141, 72 P. 887 (1903).

Where the ground alleged for the appointment of a receiver of a corporation is "imminent danger of insolvency," facts must be alleged sufficient to show such imminent danger. Cronan v. District Court, 15 Idaho 184, 96 P. 768 (1908).

Probable insufficiency of mortgaged property to discharge the mortgage debt so as to authorize appointment of a receiver in a foreclosure action must be shown by affidavit. Northwestern & Pac. Hypotheekbank v. Dalton, 44 Idaho 120, 256 P. 93 (1927).

Where nonperformance of conditions and insufficiency of property to discharge mortgage debt appears from allegations of complaint, ground for appointment of receiver is shown. Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928); Vaught v. District Court, 46 Idaho 642, 269 P. 595 (1928).

Allowances to Receiver.

A receiver is not entitled to allowances for fees paid attorneys for making his reports, narrating his acts, receipts, and expenditures as receiver and prosecuting claims for his own compensation against the estate he represents. Dalliba v. Riggs, 11 Idaho 364, 82 P. 107 (1905).

Where a receiver has failed to keep correct accounts of the business and transactions of the receivership estate and has failed to take vouchers for numerous and large expenditures, and has made large overcharges and false charges for sums claimed to have been expended by him, and has been generally reckless in his expenditures in connection with the trust and in the employment of servants, and has shown general disregard for the trust he has assumed, a court of equity will refuse to allow him any salary or

compensation for services as receiver. Dalliba v. Riggs, 11 Idaho 364, 82 P. 107 (1905).

Appeal.

Order appointing receiver is not appealable order. Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928).

Where court had jurisdiction of parties and subject-matter of action, appointment of receiver will not be questioned on writ of review. Beus v. Terrell, 46 Idaho 635, 269 P. 593 (1928).

Appointment Authorized.

Intervention by mortgagee in creditors' suit where receiver has already been appointed and prayer that income of an insolvent public service corporation be impounded is authorized under this section. Westinghouse Elec. & Mfg. Co. v. Idaho Ry., Light & Power Co., 228 F. 972 (D. Idaho 1915).

Where a party has property in his possession and under his control which he allows to depreciate in value or wrongfully disposes of, in which another party has an interest, it is proper for court to appoint a receiver. Jones v. Quayle, 3 Idaho 640, 32 P. 1134 (1893).

Where the stockholders of a corporation make application for its dissolution and it appears that the corporation is insolvent or in imminent danger of insolvency, the appointment of a receiver is proper. Security Sav. & Trust Co. v. Piper, 4 Idaho 463, 40 P. 144 (1895).

Where property of a corporation has suffered depreciation by fire and corporation is not in active operation and its capital stock is equally divided between contending factions, and its assets consist principally of cash, it is proper to appoint a receiver under subdivision 6 of this section, although none of the contingencies mentioned in subdivision 5 of this section have arisen. Gibbs v. Morgan, 9 Idaho 100, 72 P. 733 (1903).

A receiver should be appointed on application of a stockholder of a corporation where it is shown that the directors and officers of the corporation are mismanaging its affairs for their personal advantage and gain; that the profits of the corporation's business are being absorbed by such mismanagement in paying the salaries of favorite employees whose

services are unnecessary; and that the corporation is so grossly mismanaged that such mismanagement, if continued, would necessarily result in its insolvency. Hall v. Nieukirk, 12 Idaho 33, 85 P. 485 (1906).

This section authorizes the district court to appoint a receiver to receive and take charge of notes, accounts, certificates of the capital stock of corporations, and choses in action, and other personal property, where the necessity and occasion for such appointment is shown. Utah Ass'n of Credit Men v. Budge, 16 Idaho 751, 102 P. 390 (1909), rehearing denied, 16 Idaho 758, 102 P. 691 (1909).

Where a foreign corporation leases its irrigation system to another corporation engaged in the distribution of water for rental and sale and the latter corporation becomes insolvent, the court has jurisdiction to appoint a receiver of the entire property of both corporations pending litigation to determine the interest a purchaser of water may have acquired in such system. Idaho Fruit Land Co. v. Great W. Beet Sugar Co., 17 Idaho 273, 105 P. 562 (1909).

Right to have a receiver appointed is available in an action by a mortgagee for foreclosure where it appears that the property is in danger of being lost, removed, or materially injured, or that condition of the mortgage has not been performed, and the property is probably insufficient to discharge debt. Keane v. Kibble, 28 Idaho 274, 154 P. 972 (1915).

This section confers jurisdiction to appoint receiver in foreclosure of chattel mortgage. Utah Ass'n of Credit Men v. Budge, 16 Idaho 751, 102 P. 390, rehearing denied, 16 Idaho 758, 102 P. 691 (1909).

Where terms of a mortgage have been broken and property is insufficient to satisfy mortgage, one who has been subrogated to rents, interests, and profits has prima facie right to appointment of receiver. Vaught v. District Court, 46 Idaho 642, 269 P. 595 (1928).

Allegations of complaint held to authorize appointment of receiver for corporation. Eldridge v. Payette-Boise Water Users' Ass'n, 49 Idaho 36, 285 P. 1039 (1930).

It was not an abuse of discretion to appoint an ancillary receiver, where judgment creditor was satisfying a New York judgment and showed a need

for assistance in identifying debtor's assets in Idaho. Wechsler v. Wechsler, 162 Idaho 900, 407 P.3d 214 (2017).

Appointment Not Authorized.

Where mortgage requires mortgagor to keep property insured but provides that in case he fails to do so, mortgagee may insure and have an additional lien on the property for the amount paid for insurance, failure of mortgagor to insure is not such waste as to authorize appointment of a receiver. Eureka Mining, Smelting & Power Co. v. Lewiston Nav. Co., 12 Idaho 472, 86 P. 49 (1906).

The fact that a mortgaged boat is being used to ply waters without the state is not grounds for the appointment of a receiver on the application of mortgagee, where the mortgage merely stipulates that the boat is not to be taken without the limits "of the United States" and it does not appear that it is being so taken, or that the waters in which it is used are any more dangerous than those within the state. Eureka Mining, Smelting & Power Co. v. Lewiston Nav. Co., 12 Idaho 472, 86 P. 49 (1906).

Collateral Attack.

Appointment of receiver can not be attacked collaterally unless it is shown that order of appointment was void. Weil v. Defenbach, 36 Idaho 37, 208 P. 1025 (1922).

Effect of Appointment.

The appointment of a receiver does not necessarily cause the dissolution of a corporation unless the court so directs; the receiver may be appointed simply to manage the affairs of the company during the pendency of the litigation. Hall v. Nieukirk, 12 Idaho 33, 85 P. 485 (1906).

Except so far as the control of the affairs of a domestic or foreign corporation is placed in the hands of the receiver, its officers and directors, except when enjoined by the court appointing the receiver, continue to exercise their functions as if no receiver had been appointed. Rowe v. Stevens, 25 Idaho 237, 137 P. 159 (1913).

When receiver is appointed to take care of property subject of mortgage foreclosure, such property is chargeable with expense incurred in its

preservation and care. Colorado Nat'l Bank v. Meadow Creek Livestock Co., 36 Idaho 509, 211 P. 1076 (1922).

Foreclosure Suit.

The appointment of a receiver in a mortgage foreclosure where the conditions of the mortgage have not been performed and the security is probably insufficient to discharge the debt is justified where the evidence shows insufficiency of security and that the property was being neglected. Pacific Coast Joint Stock Land Bank v. Security Prods. Co., 56 Idaho 436, 55 P.2d 716 (1936).

Jurisdiction to Appoint.

An action is not pending in such sense as to authorize the appointment of a receiver until complaint has been placed in the hands of the clerk or in his office for the purpose of receiving the filing mark. Gold Hunter Mining & Smelting Co. v. Holleman, 3 Idaho 99, 27 P. 413 (1891).

District courts have no jurisdiction to appoint receivers in all actions which may be pending before them, but only in the classes of cases mentioned in this section, and then, when prior to judgment, it is made to appear that such an appointment is necessary in order to protect the rights of the parties. Sweeny v. Mayhew, 6 Idaho 455, 56 P. 85 (1899).

A plaintiff is not entitled to the appointment of a receiver where the defendant fully meets and denies the equities of his bill by a sworn answer, unless he overcomes the denials in the answer by further proof in support of his bill. Sweeny v. Mayhew, 6 Idaho 455, 56 P. 85 (1899).

This section must be construed with §§ 11-504 to 11-507 relative to proceedings supplementary to execution and does not authorize the judge before whom supplementary proceedings are pending to determine the interests of a garnishee in such proceedings and appoint a receiver to take charge of the property garnished. Spaulding v. Coeur d'Alene Ry. & Nav. Co., 6 Idaho 638, 59 P. 426 (1899).

Courts of equity have the power and authority to appoint receivers of property and to direct them to care for, protect, and preserve the property and to decree the charges and expenses therefor as prior and preferred liens to that of all other liens, mortgages, or incumbrances, and to direct the property sold for the payment of the same. Dalliba v. Riggs, 11 Idaho 364,

82 P. 107 (1905); Hewitt v. Great W. Beet Sugar Co., 20 Idaho 235, 118 P. 296 (1911); Commercial Trust Co. v. Idaho Brick Co., 25 Idaho 755, 139 P. 1004 (1913).

Where all the parties interested in property and having control over it are personally present in court, the court may appoint a receiver to take charge of the property (in proper case), although the property is outside of the jurisdiction of the state. Eureka Mining, Smelting & Power Co. v. Lewiston Nav. Co., 12 Idaho 472, 86 P. 49 (1906).

A receiver can not be appointed until an action is pending or has passed to judgment. Elmore County Irrigation Farms Ass'n v. Stockslager, 22 Idaho 420, 126 P. 616 (1912).

There are no provisions in the statutes which limit the jurisdiction of the court in appointing trustees and receivers of a foreign corporation which owns valuable property in the state and is making contracts and carrying on business, where such corporation becomes insolvent and has creditors and is unable to pay its debts; such corporation can be sued in the courts of the state, and the courts acquire jurisdiction of such corporation by reason of the fact that such corporation has appointed an agent and a principal place of business in the state, and the judge of the district court has power to make such appointment. Rowe v. Stevens, 25 Idaho 237, 137 P. 159 (1913).

In addition to the grounds specified in this section, a receiver may be appointed in all other cases where receivers have been appointed by the usages of courts of equity. Riley v. Callahan Mining Co., 28 Idaho 525, 155 P. 665 (1916).

District court has power to appoint receiver for insolvent corporation and power to decide whether facts exist warranting such appointment. Weil v. Defenbach, 36 Idaho 37, 208 P. 1025 (1922); Eldridge v. Payette-Boise Water Users' Ass'n, 49 Idaho 36, 285 P. 1039 (1930).

Appeal by party who has been directed to execute certain conveyances in carrying out judgment of court and has neglected to do so does not stay proceedings in trial court so as to prevent appointment of receiver. Bedal v. Johnson, 37 Idaho 359, 218 P. 641 (1923).

Supreme Court has authority to appoint receiver in exercise of its appellate jurisdiction. Riggen v. Perkins, 40 Idaho 486, 234 P. 161 (1925).

Applications for appointment of receiver should be made first to lower court or reasons given which render it indispensable that they should be made in Supreme Court. Riggen v. Perkins, 40 Idaho 486, 234 P. 161 (1925).

Powers of Receivers.

A receiver is an officer of the court, under its protection, and property in his hands is *in custodia legis*; therefore, no one can sue him concerning such property without leave of the court which appointed him. Martin v. Atchison, 2 Idaho 624, 33 P. 47 (1890).

A receiver in charge of the property of a corporation has no authority to carry on the business of the corporation unless he be so authorized and directed by the court. Dalliba v. Riggs, 11 Idaho 364, 82 P. 107 (1905).

A court of equity has no authority to direct its receiver in charge of placer mines to carry on a general mining business, and charge the expenses of the business and operations as a prior and preferred lien against the property over that of prior recorded mortgages and incumbrances on the same property. Dalliba v. Riggs, 11 Idaho 364, 82 P. 107 (1905).

Trustees.

The office of trustee appointed for the purpose of preserving community property and the income and proceeds thereof in order to make it available for the support and education of the children where both parents were found unfit for custody and financially irresponsible was comparable to that of a receiver. Jones v. State, 85 Idaho 135, 376 P.2d 361 (1962).

Lack of appointment of a receiver does not relieve statutory trustees of their fiduciary obligations. Northwest Roofers & Employers Health & Sec. Trust Fund v. Bullis, 114 Idaho 56, 753 P.2d 267 (Ct. App. 1988).

Cited Cederholm v. Loofborrow, 2 Idaho 191, 9 P. 641 (1886); Northwestern & Pac. Hypotheekbank v. Dalton, 44 Idaho 120, 256 P. 93 (1927); Smith v. Great Basin Grain Co., 98 Idaho 266, 561 P.2d 1299 (1977); Lettunich v. Lettunich, 141 Idaho 425, 111 P.3d 110 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 25 et seq.

C.J.S. — 75 C.J.S., Receivers, § 3 et seq.

ALR. — Receiver's personal liability for negligence in failing to care for or maintain property in receivership. 20 A.L.R.3d 967.

What constitutes waste justifying appointment of receiver of mortgaged property. 55 A.L.R.3d 1041.

Lien for towing or storage, ordered by public officer, of motor vehicle. 85 A.L.R.3d 199.

§ 8-601A. Additional grounds for appointment of receivers. — (1) At any time after the filing for record of a notice of default and election to sell real property under a power of sale contained in a deed of trust, in accordance with the provisions of section 45-1505(3), Idaho Code, the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property and of any personal property subject to the deed of trust or to related security documents.

(2) A receiver may be appointed, pursuant to the provisions of subsection (1) of this section, or of section 8-601, Idaho Code, where it appears that personal property subject to the deed of trust or mortgage, or to related security documents, is in danger of being lost, removed, concealed, materially injured or destroyed, that real property subject to the deed of trust or mortgage is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

History.

I.C., § 8-601A, as added by 1993, ch. 280, § 1, p. 948.

CASE NOTES

Requirements.

Although this section is specific to the appointment of a receiver in cases involving defaults under a deed of trust, it nonetheless requires the court to consider whether certain factors are present. Those factors —the danger of substantial waste and the insufficient value of the property to discharge the debt — are similar to factors considered under federal law. Canada Life Assur. Co. v. Lapeter, 563 F.3d 837 (9th Cir. 2009).

§ 8-602. Appointment upon dissolution of corporation. — Upon the dissolution of any corporation the district court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any member or stockholder thereof, may appoint one (1) or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

History.

C.C.P. 1881, § 342; R.S., R.C., & C.L., § 4330; C.S., § 6818; I.C.A., § 6-602.

STATUTORY NOTES

Cross References.

Dissolution of nonprofit corporations, § 30-3-110 et seq.

CASE NOTES

Distribution of Assets.

Distribution of portion of assets in specie among certain of the stockholders, without any finding as to value of same, and decree of sale of balance of property and distribution of proceeds upon basis of a copartnership held erroneous. Clow v. Redman, 6 Idaho 568, 57 P. 437 (1899).

Cited Smith v. Great Basin Grain Co., 98 Idaho 266, 561 P.2d 1299 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 36 et seq.

§ 8-603. Who may be appointed — Undertaking upon ex parte appointment — Additional undertaking. — No party, or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties filed with the clerk. If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

History.

C.C.P. 1881, § 343; R.S., R.C., & C.L., § 4331; C.S., § 6819; I.C.A., § 6-603.

STATUTORY NOTES

Cross References.

Justification of sureties, § 12-614; Idaho R. Civ. P. 66(a).

State, county or city need not give bond, § 12-615.

Statutory form of undertaking, § 12-613.

CASE NOTES

Appointment of person inadvertently made party.

Basis of appointment.

Discretion of court in requiring bond.

Ex parte appointment.

Wrongful appointment.

Appointment of Person Inadvertently Made Party.

This section is not intended to prevent the appointment of a person inadvertently made a party to foreclosure proceedings, where no relief is sought against him, and where, upon the application for his appointment, the court dismisses him as a party. Reed v. Hartsock, 38 Idaho 771, 225 P. 139 (1924).

Basis of Appointment.

A receiver cannot be appointed merely on the basis of a contract provision since statutory requirements for appointment for a receiver must exist before a court has jurisdiction to make appointment. Huggins v. Green Top Dairy Farms, Inc., 75 Idaho 436, 273 P.2d 399 (1954).

Discretion of Court in Requiring Bond.

It is within the discretion of court to require an undertaking before a receiver is appointed, and the court may require, at its discretion, an undertaking at any time after the appointment. Lee v. Stevens, 22 Idaho 670, 127 P. 680 (1912).

Ex Parte Appointment.

This section recognizes the right of a judge to appoint a receiver upon ex parte application. Murphy v. McCarty, 69 Idaho 193, 204 P.2d 1014 (1949).

Wrongful Appointment.

Where defendant tendered amount sufficient to pay alleged delinquent installments on purchase contract but plaintiffs refused to accept same and had a receiver appointed the same day for defendant, the appointment was wrongful. Huggins v. Green Top Dairy Farms, Inc., 75 Idaho 436, 273 P.2d 399 (1954).

Defendant is entitled to damages sustained as result of wrongful appointment of receiver. Huggins v. Green Top Dairy Farms, Inc., 75 Idaho 436, 273 P.2d 399 (1954).

Where trial court appointed a receiver for defendant dairy in ex parte proceeding based on allegation that defendant was delinquent on installments under defendant and without requiring plaintiffs to post an undertaking to indemnify contract of purchase without notice to defendant should appointment of receiver be wrongful, the appointment was

improvident, without cause, and an abuse of discretion. Huggins v. Green Top Dairy Farms, Inc., 75 Idaho 436, 273 P.2d 399 (1954).

Cited Cronan v. District Court, 15 Idaho 184, 96 P. 768 (1908).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 10 et seq.

C.J.S. — 75 C.J.S., Receivers, § 71 et seq.

§ 8-604. Oath and bond of receiver. — Before entering upon his duties the receiver must be sworn to perform them faithfully, and with one (1) or more sureties, approved by the court or judge, execute an undertaking, to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

History.

C.C.P. 1881, § 344; R.S., R.C., & C.L., § 4332; C.S., § 6820; I.C.A., § 6-604.

STATUTORY NOTES

Cross References.

Allowance to receiver of premium paid for company bond, § 41-2606.

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 59 et seq.

C.J.S. — 75 C.J.S., Receivers, § 75 et seq.

§ 8-605. Powers of receiver. — The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

History.

C.C.P. 1881, § 345; R.S., R.C., & C.L., § 4333; C.S., § 6821; I.C.A., § 6-605.

CASE NOTES

Power of dispersing agent.

Liability of receiver.

Power of court.

Receiver's sale.

Trustee.

Power of Dispersing Agent.

Partner was incorrect when he claimed that the partners never envisioned granting the dispersing agent authority to sell the property where there was no evidence indicating that the partners wished to retain the authority to execute the closing documents or that a paragraph in their mediated compromise agreement meant something other than what it stated, that all partnership real estate was to be sold by the dispersing agent with a qualified real estate broker for not less than fair market value. Lettunich v. Lettunich, 141 Idaho 425, 111 P.3d 110 (2005).

Liability of Receiver.

A receiver is charged with knowledge of the general condition of the insolvent business after he has had charge a sufficient length of time to acquaint himself with its affairs. Brown v. Miller, 22 Idaho 307, 125 P. 981 (1912).

Power of Court.

A receiver is an officer of the court, under its protection, and property in his hands is *in custodia legis*; therefore, no one can sue him concerning such property without leave of the court which appointed him. Martin v. Atchison, 2 Idaho 624, 33 P. 47 (1890).

A court of equity has no power to authorize a receiver to incur indebtedness in carrying on a private business, and to make same a first and paramount lien upon corpus of the property, superior to that of prior lienholders, without their consent. Dalliba v. Riggs, 11 Idaho 364, 82 P. 107 (1905); Stevens v. Evening Courier, 31 Idaho 710, 175 P. 964 (1918).

It was not intended that a court or judge should take charge of the property of a private corporation through its receiver and operate it indefinitely for the benefit of its creditors. Cronan v. District Court, 15 Idaho 184, 96 P. 768 (1908).

Receiver's Sale.

A district judge at chambers has power to order sale of property in the hands of receiver, with instructions to receiver to report sale to court for confirmation. First Nat'l Bank v. C. Bunting & Co., 7 Idaho 387, 63 P. 694 (1900).

A receiver's sale is a judicial sale and is required to be made upon not less than five nor more than ten days' notice, as are other judicial sales; a sale by a receiver on an ex parte application at chambers, made upon only three days' notice posted in only three places in the county is void, and an order confirming the same should be set aside. First Nat'l Bank v. C. Bunting & Co., 7 Idaho 387, 63 P. 694 (1900).

In order to justify setting aside a judicial sale on behalf of one attacking it on the ground of alleged irregularities in the conduct of such sale, person attacking such sale should allege and establish injury to himself resulting from the irregularities complained of. In re Great W. Beet Sugar Co., 22 Idaho 328, 125 P. 799 (1912).

Trustee.

The office of trustee appointed for the purpose of preserving community property and the income and proceeds thereof in order to make it available

for the support and education of the children where both parents were found unfit for custody and financially irresponsible was comparable to that of a receiver. Jones v. State, 85 Idaho 135, 376 P.2d 361 (1962).

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Receivers, § 128 et seq.

C.J.S. — 75 C.J.S., Receivers, § 98 et seq.

§ 8-606. Investment of funds. — Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made except upon the consent of all the parties to the action.

History.

C.C.P. 1881, § 346; R.S., R.C., & C.L., § 4334; C.S., § 6822; I.C.A., § 6-606.

CASE NOTES

Cited Lettunich v. Lettunich, 141 Idaho 425, 111 P.3d 110 (2005).

Chapter 7
DEPOSIT IN COURT

Sec.

8-701. When deposit may be ordered.

8-702. Custody of money deposited.

8-703. Enforcement of order for deposit.

8-704. Wage assignment for child support.

8-705. Wage assignment for support and care of delinquent child.

§ 8-701. When deposit may be ordered. — When it is admitted by the pleading, or shown upon the examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

History.

C.C.P. 1881, § 347; R.S., R.C., & C.L., § 4339; C.S., § 6823; I.C.A., § 6-701.

STATUTORY NOTES

Cross References.

Deposit in court in condemnation proceedings, § 7-715.

CASE NOTES

Action under color of office.

Money held by trustee.

Action Under Color of Office.

Where from the statutes, the probate judge could have considered that he had power, and that it was his duty, to protect a ward and purchaser of the ward's land when guardian was in default in payment of premiums on his bond, and it was necessary to quiet the title to such land before a sale could be completed, the probate judge's order that the purchase money be paid to the probate judge pending the outcome of the quiet title action was under "color of office," and a surety on the probate judge's official bond was liable upon the probate judge's embezzlement of such funds. Grayson v. Linton, 63 Idaho 695, 125 P.2d 318 (1942).

Money Held by Trustee.

Where it appears from pleadings, and by admission of a trustee, that trustee holds certain moneys in trust, and that he holds such moneys subject to order of court and has no interest or claim in same, an application for deposit of such money into court, made by all parties claiming an interest in same, will be granted. Reid v. Steele, 7 Idaho 571, 64 P. 892 (1901).

Cited Sage v. Richtron, Inc., 108 Idaho 837, 702 P.2d 875 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 23 Am. Jur. 2d, Deposits in Court, § 1 et seq.

C.J.S. — 26B C.J.S., Deposits in Court, § 1 et seq.

ALR. — Funds deposited in court as subject of garnishment. 1 A.L.R.3d 936.

Appealability of order directing payment of money into court. 15 A.L.R.3d 568.

Payment or deposit of award in court as affecting condemnor's right to appeal. 40 A.L.R.3d 203.

§ 8-702. Custody of money deposited. — If the money is deposited in court it must be paid to the clerk, who must deposit it with the county treasurer, by him to be held subject to the order of the court. For the safe keeping of the money deposited with him the treasurer is liable on his official bond.

History.

C.C.P. 1881, § 348; R.S., R.C., & C.L., § 4340; C.S., § 6824; I.C.A., § 6-702.

STATUTORY NOTES

Cross References.

Disposition of unclaimed property held by court, § 14-508.

CASE NOTES

Deposit with Judge.

A plaintiff who refused to accept tender and permitted it to be withdrawn was not prejudiced by the order of the court requiring the deposit to be made with the judge rather than with the clerk or failure of the clerk to deposit the money with the county treasurer, as required by this section. Darrar v. Joseph, 91 Idaho 210, 419 P.2d 211 (1966).

RESEARCH REFERENCES

Am. Jur. 2d. — 23 Am. Jur. 2d, Deposits in Court, § 1 et seq.

C.J.S. — 26B C.J.S., Deposits in Court, § 1 et seq.

§ 8-703. Enforcement of order for deposit. — Whenever, in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

History.

C.C.P. 1881, § 349; R.S., R.C., & C.L., § 4341; C.S., § 6825; I.C.A., § 6-703.

RESEARCH REFERENCES

C.J.S. — 26B C.J.S., Deposits in Court, § 1 et seq.

Am. Jur. 2d. — 23 Am. Jur. 2d, Deposits in Court, § 1 et seq.

§ 8-704. Wage assignment for child support. — In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign such sum as the court may determine to be equitable to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of either parent due in the future to apply on the amount ordered by the court for the support and maintenance of the minor child. Such order shall be binding upon an employer upon the service of a copy of such order upon such employer and until further order of the court. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

History.

I.C., § 8-704, as added by 1977, ch. 90, § 1, p. 184.

§ 8-705. Wage assignment for support and care of delinquent child. — In any proceeding where the court has ordered a parent or custodian to pay any amount for the care, support or maintenance of a child adjudged to be within the purview of chapter 5, title 20, Idaho Code, and through the adjudication has rendered a liability upon the parent or custodian to pay damages or to pay for the child's support and care, the following procedure may be utilized for collection. The court may order the parent or custodian to assign a sum as the court may determine to be equitable or as may otherwise be provided by statute or contract to the county clerk, probation officer or other office of the court or county officer designated by the court to receive such payment. The assignment shall be that portion of salary or wages of the parent or custodian the court deems would be due in the future to apply on the amount ordered by the court for the care, support or maintenance of the delinquent child or for breach of contract caused by the child's delinquency. The order shall be binding upon an employer and until further order of the court. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution or other assignment, unless otherwise ordered by the court. All sums collected pursuant to the provisions of this section shall be remitted as may be provided by law.

History.

I.C., § 8-705, as added by 1989, ch. 155, § 15, p. 371; am. 2004, ch. 23, § 1, p. 25; am. 2012, ch. 257, § 1, p. 709.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 257, deleted "legal guardian" following "parent" in four places.

Effective Dates.

Section 21 of S.L. 1989, ch. 155 provided that the act should take effect January 15, 1990.

Licensed to the People of Idaho, Public Resource

Title 9
EVIDENCE

Chapter

Chapter 1. Judicial Knowledge, §§ 9-101, 9-102.
Chapter 2. Witnesses, §§ 9-201 — 9-207.
Chapter 3. Public Writings, §§ 9-301 — 9-350.
Chapter 4. Private Writings, §§ 9-401 — 9-421.
Chapter 5. Indispensable Evidence — Statute of Frauds, §§ 9-501 — 9-508.
Chapter 6. Production of Altered Writings, § 9-601.
Chapter 7. Means of Production of Evidence, §§ 9-701 — 9-740.
Chapter 8. Uniform Mediation Act, §§ 9-801 — 9-814.
Chapter 9. Depositions. [Repealed.]
Chapter 10. Taking Testimony Out of Court. [Repealed.]
Chapter 11. Proceedings to Perpetuate Testimony. [Repealed.]
Chapter 12. Examination of Witnesses. [Repealed.]
Chapter 13. Rights and Duties of Witnesses, §§ 9-1301 — 9-1306.
Chapter 14. Administration of Oaths and Affirmations, §§ 9-1401 — 9-1406.
Chapter 15. Tender and Receipt, §§ 9-1501, 9-1502.
Chapter 16. Fees and Mileage of Witnesses, §§ 9-1601 — 9-1605.
Chapter 17. Proof of Facts Contained in Public Records, §§ 9-1701, 9-1702.
Chapter 18. Uniform Child Witness Testimony By Alternative Methods Act, §§ 9-1801 — 9-1808.

Idaho Code Ch. 1

Chapter 1
JUDICIAL KNOWLEDGE

Sec.

9-101. Facts judicially noticed.

9-102. Questions of law addressed to court.

§ 9-101. Facts judicially noticed. — Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of legal expressions.

2. Whatever is established by law.

3. Public and private official acts of the legislative, executive and judicial departments of this state and of the United States.

4. The seals of all the courts of this state and of the United States.

5. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive and judicial departments of this state and of the United States.

6. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States.

7. The seals of courts of admiralty and maritime jurisdiction, and of notaries public.

8. The laws of nature, the measure of time, and the geographical divisions and political history of the world. In all these cases the court may resort for its aid to appropriate books or documents of reference.

History.

C.C.P. 1881, § 896; R.S., R.C., & C.L., § 5950; C.S., § 7933; I.C.A., § 16-101.

STATUTORY NOTES

Cross References.

Judicial notice of newly incorporated cities, § 50-104.

Public records, proving, Idaho Evid. R. 1005.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Common knowledge.

Designation of controlled substance.

Facts judicially noticed.

Facts not judicially noticed.

Facts occurring after trial and pending appeal.

Laws of nature.

Local ordinances.

Receipt of letter.

Common Knowledge.

It is a matter of common knowledge that American Surety Company of New York is commonly spoken of as American Surety Company. American Sur. Co. v. Blake, 54 Idaho 1, 27 P.2d 972 (1933).

It is a matter of common knowledge that the eye is most sensitive, and serious injury thereto causes intense pain. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

It is a matter of common knowledge that newspapers are widely circulated and read. O'Malley v. Statesman Printing Co., 60 Idaho 326, 91 P.2d 357 (1939).

Designation of Controlled Substance.

The question whether a substance is designated in the Uniform Controlled Substances Act as a controlled substance is a question of law for the court, and not the jury, to decide. State v. Hobbs, 101 Idaho 262, 611 P.2d 1047 (1980).

Facts Judicially Noticed.

Judicial notice has been taken of the following:

Abbreviations in common use describing legal subdivisions of land. Empire Mill Co. v. District Court, 27 Idaho 383, 149 P. 499, writ denied, 27 Idaho 400, 149 P. 505 (1915).

Acts of congress, both public and private, and of executive branch of the United States government. Oregon Short Line R.R. v. Gooding, 6 Idaho 773, 59 P. 821 (1899).

Automobile factories, nonexistence in state. George B. Wallace, Inc. v. Pfost, 57 Idaho 279, 65 P.2d 725 (1937).

Boise City is in Ada County, state of Idaho. Shaw v. Martin, 20 Idaho 168, 117 P. 853 (1911).

Census, requirement for and taking of federal decennial census, and of the fact that no official state census had been taken for a particular year. Twin Falls ex rel. Cannon v. Koehler, 63 Idaho 562, 123 P.2d 715 (1942).

City of Lewiston, the size and location of. Chamberlain v. Lewiston, 23 Idaho 154, 129 P. 1069 (1912), appeal dismissed, 234 U.S. 751, 34 S. Ct. 775, 58 L. Ed. 1576 (1914).

Distance between Payette and Boise is about sixty-five miles, and that medical and hospital facilities at Boise are readily accessible at a moderate cost. Flock v. J.C. Palumbo Fruit Co., 63 Idaho 220, 118 P.2d 707 (1941).

Doors opening outwardly over sidewalks, continued existence and general use after enactment in 1915 of statute defining a nuisance. Rief v. Mountain States Tel. & Tel. Co., 63 Idaho 418, 120 P.2d 823 (1942).

Expiration of term of office of district judge. Boise-Kuna Irrigation Dist. v. Hartson, 48 Idaho 572, 285 P. 456 (1929).

Federal court judgments and decrees that affect subject-matter of action before state court. Williams v. Sherman, 36 Idaho 494, 212 P. 971 (1922).

Federal departments, regulations of, promulgated pursuant to acts of congress. State ex rel. Taylor v. Taylor, 58 Idaho 656, 78 P.2d 125 (1956); A.C. Frost & Co. v. Coeur d'Alene Mines Corp., 61 Idaho 21, 98 P.2d 965 (1939), reversed on other grounds, 312 U.S. 38, 61 S. Ct. 414, 85 L. Ed. 500 (1941).

Federal taxes on electric light bills. City of Idaho Falls v. Pfost, 53 Idaho 247, 23 P.2d 245 (1933).

Fruit and vegetable production in Idaho comprises the major agricultural activity of Idaho. State ex rel. Graham v. Enking, 59 Idaho 321, 82 P.2d 649 (1938).

Income as such has never been assessed or taxed as "property" in Idaho. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

Journals of the house of representatives and senate. Peavy v. McCombs, 26 Idaho 143, 140 P. 965 (1914); State ex rel. Hall v. Eagleson, 32 Idaho 280, 181 P. 935 (1919); Lloyd Corp. v. Bannock County, 53 Idaho 478, 25 P.2d 217 (1933).

Local elections, as to whether or not a statute dependent for its existence upon a successful local election is in force in any particular county. State v. Schmitz, 19 Idaho 566, 114 P. 1 (1911).

Motor vehicles, operation of during World War II was reduced to a minimum and private passenger automobiles were practically eliminated. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

National banks, existence of. First Nat'l Bank v. Walker, 27 Idaho 199, 148 P. 46 (1915).

Nez Perce County, that all townships in said county are situated north of the base line. Armstrong v. Jarron, 21 Idaho 747, 125 P. 170 (1912).

Notaries public of sister state, seals of. Dalstrom v. Walker, 33 Idaho 374, 194 P. 847 (1920).

Notary public's official seal is judicially noticed and the regularity of an official act is presumed. Bruce v. Frame, 39 Idaho 29, 225 P. 1024 (1924). To same effect, see Dement v. City of Caldwell, 22 Idaho 62, 125 P. 200 (1912).

Paved highways, existence along railroad line. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

Prosecuting officer of the county, official position of, and the person holding that office. State v. Burtenshaw, 25 Idaho 607, 138 P. 1105 (1914).

Secretary of agriculture, regulations adopted by, for government of national forests. McFall v. Orkoosh, 37 Idaho 243, 215 P. 978 (1923).

State auditor, succession in office of. Doolittle v. Eckert, 53 Idaho 384, 24 P.2d 36 (1933).

State officials and departments, reports of. Albrethsen v. State, 60 Idaho 715, 96 P.2d 437 (1939).

State treasurers' reports showing receipts for certain years credited to the liquor control fund. Albrethsen v. State, 60 Idaho 715, 96 P.2d 437 (1939).

Journals of the legislative bodies to determine whether an act of the legislature was constitutionally passed and for the purpose of ascertaining what was done by the legislature. Keenan v. Price, 68 Idaho 423, 195 P.2d 662 (1948); Rich v. Williams, 81 Idaho 311, 341 P.2d 432 (1959); State ex rel. Brassey v. Hanson, 81 Idaho 403, 342 P.2d 706 (1959).

Public and private Acts of the legislature. Keenan v. Price, 68 Idaho 423, 195 P.2d 662 (1948); Rich v. Williams, 81 Idaho 311, 341 P.2d 432 (1959); State ex rel. Brassey v. Hanson, 81 Idaho 403, 342 P.2d 706 (1959).

Idaho motorist's guide issued by department of law enforcement, since guide is an official pronouncement of an executive department of state of Idaho. Ineas v. Union P.R.R., 72 Idaho 390, 241 P.2d 1178 (1952).

The supreme court will take judicial notice of the contents of the journals of the Idaho legislature. State v. Witzel, 79 Idaho 211, 312 P.2d 1044 (1957).

The judicial notice taken by the courts of this state of the public and private official acts of the executive department of the state government includes the "Idaho Drivers Handbook" published under the authority of the department of law enforcement and the "Manual on Uniform Traffic Control Devices for Streets and Highways" prepared by the American Association of State Highways Officials, Institute of Traffic Engineers, and National Conference on Street and Highway Safety, adopted by the Idaho board of highway directors. Howard v. Missman, 81 Idaho 82, 337 P.2d 592 (1959).

The district court will take judicial notice of its own records in a case before it. State v. Morris, 81 Idaho 267, 340 P.2d 447 (1959).

Minutes of the meetings of the board of examiners. Padgett v. Williams, 82 Idaho 114, 350 P.2d 353 (1960).

Order of board of highway directors fixing and designating 35 miles per hour as the reasonable, safe, prima facie speed limit on certain portion of U.S. Highway 30, and of the fact that the section of the highway to which it relates is a part of the state highway system. State v. Wendler, 83 Idaho 213, 360 P.2d 697 (1961).

In an action by a city to condemn land for use of an adjacent airport, reference in the court's instructions to the jury to the duty of the city to protect the flying public by providing a clear space at the end of its runway in conformity with safety regulations was to facts of which the court took judicial notice. Caldwell v. Roark, 92 Idaho 99, 437 P.2d 615 (1968).

That the judge who heard the evidence presented in the trial below had since died. Walter v. Potlatch Forests, Inc., 94 Idaho 738, 497 P.2d 1039 (1972).

Where former wife was granted a judgment modifying a divorce decree by awarding custody of two children to her as a result of material change in conditions, including her remarriage, which warranted transfer of custody to her, the supreme court was not bound by principles of res judicata and thus appropriately granted the former husband's motion to supplement the appeal record and took judicial notice of former wife's divorce. England v. Phillips, 96 Idaho 830, 537 P.2d 1019 (1975).

Facts Not Judicially Noticed.

Courts have refused to take judicial notice of the following:

Carey Act company or corporation, existence of. Coulson v. Aberdeen-Springfield Canal Co., 39 Idaho 320, 227 P. 29 (1924).

Chinese words and phrases, signification of. State v. Moon, 20 Idaho 202, 117 P. 757 (1911).

Decisions or statutes of other states. Mason v. Pelkes, 57 Idaho 10, 59 P.2d 1087, cert. denied, 299 U.S. 615, 57 S. Ct. 319, 81 L. Ed. 453 (1936).

District court adjournments, supreme court will not take judicial notice of adjournment before expiration of term. State v. Cotterel, 12 Idaho 572, 86 P. 527 (1906).

District court rules, supreme court does not take judicial notice of. Powell v. Springston Lumber Co., 12 Idaho 723, 88 P. 97 (1906); Peters v. Walker, 37 Idaho 195, 215 P. 845 (1923); Judy v. Reilly Atkinson Co., 59 Idaho 752, 87 P.2d 451 (1938).

Municipal ordinances. State v. Egli, 41 Idaho 422, 238 P. 514 (1925).

Public domain, when lands are part of unsurveyed public domain, or when they ceased to be part of such public domain. Williams v. Sherman, 35 Idaho 169, 205 P. 259 (1922).

State land board, rules of. Bothwell v. Bryant, 36 Idaho 337, 210 P. 1003 (1922).

War, until there has been some act or declaration creating or recognizing the existence of the war by the department of the government clothed with the war-making power. Rosenau v. Idaho Mut. Benefit Ass'n, 65 Idaho 408, 145 P.2d 227 (1944).

A court may not take judicial notice of city ordinances or of the various codes adopted under them. Marcher v. Butler, 113 Idaho 867, 749 P.2d 486 (1988).

Facts Occurring After Trial and Pending Appeal.

It sometimes occurs that the doctrine of judicial notice works a reversal of a case where the judgment of the lower court was correct at the time it was rendered and such may be the case where a foreign government had no right to sue because it had not been recognized by the state department of the United States, but after an adverse decision and pending appeal by it, such government was recognized, then the judgment of the lower court will be reversed upon the reviewing court taking judicial notice of such recognition by the state department. Republic of China v. Merchants' Fire Assurance Corp., 30 F.2d 278 (9th Cir. 1929).

In order to rely upon the laws of another jurisdiction, it is necessary that they be pleaded and proved as a fact. Treinies v. Sunshine Mining Co., 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85 (1939). See also, Maloney v. Winston Bros. Co., 18 Idaho 740, 111 P. 1080 (1910); Douglas v. Douglas, 22 Idaho 336, 125 P. 796 (1912); Mechanics & Metals Nat'l Bank v. Pingree, 40 Idaho 118, 232 P. 5 (1924); State v. Martinez, 43 Idaho 180, 250 P. 239 (1926); Kleinschmidt v. Scribner, 54 Idaho 185, 30 P.2d 362 (1934); Mason

v. Pelkes, 57 Idaho 10, 59 P.2d 1087, cert. denied, 299 U.S. 615, 57 S. Ct. 319, 81 L. Ed. 453 (1936).

The supreme court can not take judicial notice of the statutes of a sister state and can not judicially know whether a particular court of another state is or is not a court of competent jurisdiction. Cole v. Cole, 68 Idaho 561, 201 P.2d 98 (1948).

In a divorce proceeding by wife in Idaho filed subsequent to an interlocutory judgment of divorce in favor of the husband in California, the contention of the husband that because of the peculiar California statutory law and construction of the California courts an interlocutory judgment of divorce in California was final could not be sustained, where the husband neither pleaded nor proved the California law, hence Idaho law controlled. Newell v. Newell, 77 Idaho 355, 293 P.2d 663 (1955).

Laws of Nature.

Courts take judicial knowledge of the laws of nature, resorting for information to appropriate books and documents of reference. Petajaniemi v. Washington Water Power Co., 22 Idaho 20, 124 P. 783 (1912).

Courts take judicial notice of laws of nature and may consult appropriate reference works. In doing so, this court is unable to say that one plowing with both hands on the plow handles runs a greater risk from lightning stroke than one not so engaged. Wells v. Robinson Constr. Co., 52 Idaho 562, 16 P.2d 1059 (1932), overruled on other grounds, Mayo v. Safeway Store, Inc., 93 Idaho 161, 457 P.2d 400 (1969).

The courts will take judicial notice of the fact that water seeks its level; and if a witness should testify that it stood up in hillocks or piles, like stone or earth, a court would not be expected to believe it; or if a witness testified that a body, when turned loose, did not fall to the ground, but that it rather fell out into space, such evidence would not be entitled to any weight, or create a conflict of evidence. Larson v. Callahan Canning Co., 53 Idaho 746, 27 P.2d 967 (1933).

Local Ordinances.

The enumeration in this section of facts judicially noticed is not exclusive and the district court may take judicial notice of ordinances of cities and

towns within its jurisdiction. Lewiston v. Frary, 91 Idaho 322, 420 P.2d 805 (1966).

Idaho supreme court's discussion in *Marcher v. Butler*, 113 Idaho 867, 749 P.2d 486 (1988), is dicta and should not be considered as having altered or overruled sub silentio the judicial notice rule relating to this section, as established by the court's earlier decision in *City of Lewiston v. Frary*, 91 Idaho 322, 420 P.2d 805 (1966). Doe v. Doe, 146 Idaho 386, 195 P.3d 745 (Ct. App. 2008).

Receipt of Letter.

Presumption that a letter, properly addressed and mailed, was duly received by the addressee is not overcome by positive evidence of addressee to the contrary. American Sur. Co. v. Blake, 54 Idaho 1, 27 P.2d 972 (1933).

Whether a letter, properly addressed and mailed, was received by the addressee is a question for the jury. American Sur. Co. v. Blake, 54 Idaho 1, 27 P.2d 972 (1933).

Cited Castle v. Bannock County, 8 Idaho 124, 67 P. 35 (1901); State v. Schmitz, 19 Idaho 566, 114 P. 1 (1911); Armstrong v. Jarron, 21 Idaho 747, 125 P. 170 (1912); Pehrson v. C.B. Lauch Constr. Co., 237 F.2d 269 (9th Cir. 1956); City of Boise City v. Idaho Bd. of Hwy. Dirs., 94 Idaho 302, 486 P.2d 1015 (1971); Cenarrusa v. Peterson, 95 Idaho 395, 509 P.2d 1316 (1973); Mahoney v. State Tax Comm'n, 96 Idaho 59, 524 P.2d 187 (1974); Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975); Reifsteck v. Lantern Motel & Cafe, 101 Idaho 699, 619 P.2d 1152 (1980); State ex rel. Evans v. Click, 102 Idaho 443, 631 P.2d 614 (1981); Hays v. State, 113 Idaho 736, 747 P.2d 758 (Ct. App. 1987); State v. Henderson, 114 Idaho 293, 756 P.2d 1057 (1988); Knopp v. Nelson, 116 Idaho 343, 775 P.2d 657 (Ct. App. 1989); State v. Guzman, 122 Idaho 981, 842 P.2d 660 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 29 Am. Jur. 2d, Evidence, § 24 et seq.

C.J.S. — 31A C.J.S., Evidence, § 11 et seq.

ALR. — Judicial notice as to assessed valuations. 42 A.L.R.3d 1439.

Judicial notice as to location of street address within particular political subdivision. 86 A.L.R.3d 484.

§ 9-102. Questions of law addressed to court. — All questions of law arising upon the trial, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court when submitted and before the trial proceeds, and all discussions of law are to be addressed to the court. Whenever the knowledge of the court is by this chapter made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

History.

R.S., R.C., & C.L., § 5951; C.S., § 7934; I.C.A., § 16-102.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Definiteness and certainty.

Designation of controlled substance.

Inclusio unius est exclusio alterius.

Instruction on foreign statute.

Legislative intent.

Necessity for protest in payment of taxes.

Presumption as to legislature's knowledge of law.

Purpose and object of statutory construction.

Statute susceptible of two constructions.

Undisputed facts.

Words and phrases.

Definiteness and Certainty.

If a statute as amended is sufficiently definite to enable a court to place thereon a reasonable construction and declare the legislative intent, then such a statute is not so ambiguous as to be unconstitutional for uncertainty. State ex rel. Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

Designation of Controlled Substance.

The question whether a substance is designated in the Uniform Controlled Substances Act as a controlled substance is a question of law for the court, and not the jury, to decide. State v. Hobbs, 101 Idaho 262, 611 P.2d 1047 (1980).

Inclusio Unius Est Exclusio Alterius.

Where a statute specifies certain things, the designation of such things excludes all others. Peck v. State, 63 Idaho 375, 120 P.2d 820 (1941); Meader v. Unemployment Comp. Div. of Indus. Accident Bd., 64 Idaho 716, 136 P.2d 984 (1943).

Instruction on Foreign Statute.

An instruction advising the jury as to the existence of a foreign statute should include the entire statute, and not just part. Burklund v. Oregon Short Line R.R., 56 Idaho 703, 58 P.2d 773 (1936).

Legislative Intent.

It is the uniform rule in this state that where a constitutional or statutory provision was adopted from another state which had already construed the provision prior to our adoption of it, it will be assumed that it was the intention to adopt the construction previously placed upon it by the courts of the jurisdiction from which it was taken. Mundell v. Swedlund, 58 Idaho 209, 71 P.2d 434 (1937); Allan v. Oregon Short Line R.R., 60 Idaho 267, 90 P.2d 707 (1938); Girard v. Defenbach, 61 Idaho 702, 106 P.2d 1010 (1940); Bishop v. Morrison-Knudsen Co., 64 Idaho 806, 137 P.2d 963 (1943).

The supreme court will be guided by the rule that the legislative intent is the main lodestar of construction in the interpretation of a statute. Poston v.

Hollar, 64 Idaho 322, 132 P.2d 142 (1942).

Where a statute is taken from another jurisdiction and there are changes or omissions, ordinarily, such changes or omissions are deemed to have been made purposely. Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

Necessity for Protest in Payment of Taxes.

Where neither state income tax statute, which had been patterned very largely upon the federal statute authorizing recovery of taxes not paid under protest, nor any amendment, mentioned whether recovery of taxes depended upon their having been paid under protest, and the supreme court held, at the time the state tax law was passed, that other taxes could not be recovered unless there had been a protest at the time of their payment, the legislature intended that income taxes should not be refunded unless they had been paid under protest. Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

Presumption as to Legislature's Knowledge of Law.

The legislature, in passing a statute, presumptively has in mind extant law and its interpretation and legislates in relation thereto. Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

Purpose and Object of Statutory Construction.

The lodestar of statutory construction is the legislative intent, and the cardinal principle of statutory construction is to save and not to destroy the statutory enactment; and to this end a court must give effect to a statute wherever it is possible to do so and keep within the terms of the language used; and in proceeding, the court should assume that the legislature intended to enact a valid law. State ex rel Wright v. Headrick, 65 Idaho 148, 139 P.2d 761 (1943).

Statute Susceptible of Two Constructions.

A statute susceptible of two constructions, one of which would render it invalid should be so construed that the statute may be sustained. Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38, 64 Idaho 303, 131 P.2d 786 (1942).

Undisputed Facts.

Ordinarily, issues of negligence present questions of fact to be resolved by a jury; however, where the facts are undisputed and where but one reasonable conclusion can be drawn therefrom, the issue of the existence of negligence becomes a question of law to be resolved by the court. Baker v. Barlow, 94 Idaho 712, 496 P.2d 949 (1972).

Words and Phrases.

In the construing of a statute, words and phrases therein used are assumed to have been so used in the popular sense if they have not acquired a technical meaning. Meader v. Unemployment Comp. Div. of Indus. Accident Bd., 64 Idaho 716, 136 P.2d 984 (1943).

Cited Faris v. Burroughs Adding Mach. Co., 48 Idaho 310, 282 P. 72 (1929); State v. Kellogg, 102 Idaho 628, 636 P.2d 750 (1981).

RESEARCH REFERENCES

ALR. — Admissibility of visual recording of event or matter giving rise to litigation or prosecution. 41 A.L.R.4th 812.

Admissibility of visual recording of event or matter other than that giving rise to litigation or prosecution. 41 A.L.R.4th 877.

Idaho Code Ch. 2

Chapter 2
WITNESSES

Sec.

9-201. Who may be witnesses — Credibility of witnesses.

9-202. Who may not testify.

9-203. Confidential relations and communications.

9-203A. Confidential communications with accountants.

9-204. Judge or juror may testify.

9-205. Interpreters.

9-206. Deceased or absent witnesses — Transcribed testimony admissible.

9-207. Admissibility of expressions of apology, condolence and sympathy.

§ 9-201. Who may be witnesses — Credibility of witnesses. — All persons, without exception, otherwise than is specified in the next two (2) sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

History.

C.C.P. 1881, § 897; R.S., R.C., & C.L., § 5956; C.S., § 7935; I.C.A., § 16-201.

STATUTORY NOTES

Cross References.

Fees of witnesses, § 9-1601.

Refusal to be sworn as witness a contempt, § 7-601.

Rights and duties of witnesses, § 9-1301 et seq.

Transcribed testimony of deceased or absent witness admissible, § 9-206.

CASE NOTES

Binding effect of evidence.

Communications with deceased.

Conflict in testimony.

Construction and purpose.

Criminal cases.

Disbelief of interested witness.

Drug addiction as affecting credibility.

Expert testimony.

Felony conviction.

Improper admission of testimony.

Instruction singling out defendant.

Interest in event of suit.

Interpreters.

Jury exclusive judges.

Jury question.

Perjured testimony.

Religious belief.

Binding Effect of Evidence.

A board, court, or jury must accept as true the positive uncontradicted testimony of a credible witness, unless inherently improbable or rendered improbable by facts and circumstances adduced in evidence. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

Communications with Deceased.

The impropriety, if any, in the admission of testimony of communications with the deceased is not a reversible error where the fact involved was established by other competent evidence. Hartley v. Bohrer, 52 Idaho 72, 11 P.2d 616 (1932).

Conflict in Testimony.

Although the jury in a rape case believes that the prosecutrix made contradictory statements with respect to the acts complained of, it did not necessarily follow that it must reject all of her testimony as untrue. State v. Harp, 31 Idaho 597, 173 P. 1148 (1918).

The jury may believe or disbelieve the testimony of any witness, or any portion of such testimony, even though such witness may have in some

respects testified falsely in respect to a material matter, or been contradicted. State v. Cacavas, 55 Idaho 538, 44 P.2d 1110 (1935).

Where a credible witness, with apparently adequate opportunity for observation, testifies to an occurrence, the mere testimony of other witnesses that they were not cognizant of the occurrence, where the opportunities of the latter witnesses for observation are not stated, or where it affirmatively appears that their situation was such that they probably would not have observed the event if it had occurred, or where their opportunities were not coextensive with those of a witness who testifies positively to the occurrence, is not sufficient to create a conflict in the testimony. Graham v. Leek, 65 Idaho 279, 144 P.2d 475 (1943).

Contention that the evidence failed to establish either the time for the performance of the contract or the amount of work to be performed thereunder was one for determination by the jury in view of testimony that fails to disclose a meeting of the minds, one party claiming there was no agreement as to the hauling of additional ore while the other maintained the contract provided for the hauling of 50,000 tons of ore. Curzon v. Wells Cargo, Inc., 86 Idaho 38, 382 P.2d 906 (1963).

The issues presented by conflicting witnesses and the credibility of the witnesses were for resolution by the jury. State v. Peterson, 87 Idaho 147, 391 P.2d 846 (1964).

The mere fact that the testimony of witnesses in a statutory rape case was sharply conflicting only raised questions as to the credibility of the witnesses and the weight to be given their testimony, and these were matters which were exclusively for the jury's determination. State v. Gee, 93 Idaho 636, 470 P.2d 296 (1970).

Construction and Purpose.

This section adds nothing to the established rule of impeaching the credibility of witnesses; it does not authorize incompetent impeaching questions such as whether witness is truthful and whether he has repeatedly told falsehoods. People v. Barnes, 2 Idaho 161, 9 P. 532 (1886).

Purpose of this section is to remove all common-law disqualifications except those set out in the two sections next following. Sprouse v. Magee, 46 Idaho 622, 269 P. 993 (1928).

Sections 9-201 to 9-203 have been the law of Idaho since 1881 when they were enacted by the territorial legislature. They intended to, and did, remove all common-law disqualifications save as enumerated in the following sections. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

The rule applicable to all witnesses, whether parties or interested in the event of an action, is that either a board, court, or jury must accept as true the positive, uncontradicted testimony of a credible witness, unless his testimony is inherently improbable, or rendered so by facts and circumstances disclosed at the hearing or trial. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

Criminal Cases.

The provisions of this statute are not made applicable exclusively to civil actions but apply to criminal prosecutions. State v. Orr, 53 Idaho 452, 24 P.2d 679 (1933).

In prosecution of defendant for committing lewd and lascivious acts on daughter, the latter, though only 12 years of age at the time of trial, was competent to testify where, on voir dire, it was disclosed that she was capable of receiving just impressions and relating them truly to the jury. State v. Madrid, 74 Idaho 200, 259 P.2d 1044 (1953).

When an accused in a criminal action voluntarily takes the witness stand, he subjects himself to cross-examination and impeachment under the same rules and conditions as any other witness. State v. Storms, 84 Idaho 372, 372 P.2d 748 (1962).

The legislature intended that a witness might be impeached in a criminal action as in a civil action; the defendant in a criminal action, as a party to the action, need not testify at all and if he deems it prudent to remain silent, no presumption is to be indulged against him; however, when he voluntarily assumes the character of a witness, he exposes himself to the legitimate attacks which may be made upon any witness. State v. Storms, 84 Idaho 372, 372 P.2d 748 (1962).

It was not error to deny a defendant's motion to dismiss, at the close of the state's evidence, made on the ground that the prosecution's chief witness's testimony was "fantastic and incredible and could not be

believed"; it being within the province of the jury to believe or disbelieve the testimony of any witness. State v. Larsen, 91 Idaho 42, 415 P.2d 685 (1966).

A burglary defendant who had testified that, due to intoxication and the taking of pathibamate pills for ulcers, he had no recollection of anything between a time several hours prior to being found in the store that was entered and a time several hours later was not competent to answer a question by his counsel as to his intent in entering the store. State v. Johnson, 92 Idaho 533, 447 P.2d 10 (1968).

Disbelief of Interested Witness.

The industrial accident board is not at liberty to disbelieve the claimant's testimony solely on the ground that the claimant was interested in the result of the case, where there was no substantial conflict in the evidence. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

Drug Addiction as Affecting Credibility.

The habitual use of opium, morphine, cocaine, or other like narcotics, which inevitably tend to impair the mind, destroy the memory, and pervert the moral character of a witness, may be shown for the purpose of affecting his credibility or the weight that should be given to his testimony; this, however, is not ground for the exclusion of his testimony unless it satisfactorily appears that he was under its influence to such an extent that his intellect was impaired when examined as a witness. State v. Fong Loon, 29 Idaho 248, 158 P. 233 (1916).

Expert Testimony.

The credibility and weight of expert testimony, once an expert has been qualified, is exclusively a matter for determination by the jury. Harmston v. Agro-West, Inc., 111 Idaho 814, 727 P.2d 1242 (Ct. App. 1986).

Felony Conviction.

Where a witness admitted on cross-examination that he had been convicted of felony, redirect examination to show the circumstances under which the witness was convicted was properly denied, since inquiry into collateral matter which had been judicially disposed of would not be permitted. Lebak v. Nelson, 62 Idaho 96, 107 P.2d 1054 (1940).

Improper Admission of Testimony.

In prosecution for second-degree murder and aggravated burglary, trial court erred in admitting the testimony of a witness who expressed uncertainty as to whether his testimony was based on actual memories or on "dreams" after the shootings, even though the court admonished the jury that the witness' testimony was to be disregarded except as it was specifically corroborated. State v. Hall, 111 Idaho 827, 727 P.2d 1255 (Ct. App. 1986).

Instruction Singling Out Defendant.

An instruction which read as follows, "Jurors are not bound by the uncontradicted testimony of an interested party when such testimony upon being carefully weighed, does not commend itself as worthy of belief. If, by reason of improbable and inconsistent statements, the testimony of an interested party appears to be lacking in the element of truthfulness, juries may in their discretion reject the same," was not erroneous. State v. Orr, 53 Idaho 452, 24 P.2d 679 (1933).

Interest in Event of Suit.

The common-law rule excluding parties and persons interested in the outcome of the suit as witnesses was abrogated by this section; the purpose of the statute was to remove all common-law disqualifications except those expressly retained. Sprouse v. Magee, 46 Idaho 622, 269 P. 993 (1928); Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

Interpreters.

Where a witness has offered to testify to the statements of another person, spoken in a language not understood by him but translated for him by an interpreter, he is not qualified to testify as to the statement since he does not speak from personal knowledge; the interpreter or some other person who heard and understood the language in which the testimony was given, is the only competent witness to such statement. State v. Fong Loon, 29 Idaho 248, 158 P. 233 (1916).

Jury Exclusive Judges.

The jury is entitled to believe or disbelieve the testimony or any portion of the testimony of a witness. State v. Bedwell, 77 Idaho 57, 286 P.2d 641

(1955); State v. Johnson, 77 Idaho 1, 287 P.2d 425 (1955); State v. Anderson, 82 Idaho 293, 352 P.2d 972 (1960); State v. Gish, 87 Idaho 341, 393 P.2d 342 (1964).

Jury Question.

Supreme court may not inquire as to credibility of witnesses since this is exclusive province of jury. Gordon v. Sunshine Mining Co., 43 Idaho 439, 252 P. 870 (1927); Webster v. McCullough, 45 Idaho 604, 264 P. 384 (1928); Anderson v. Ruberg, 66 Idaho 417, 160 P.2d 456 (1945).

In suit on note, the question as to whether there had been a renunciation and delivery of note to maker is one of fact for jury to determine. Anderson v. Ruberg, 66 Idaho 417, 160 P.2d 456 (1945).

The determination of credibility of witnesses and weight to be given their testimony is for the jury. Curzon v. Wells Cargo, Inc., 86 Idaho 38, 382 P.2d 906 (1963).

The credibility of the witnesses, and the weight to be given to their testimony, as well as the facts, were for determination by the jury. State v. Blacksten, 86 Idaho 401, 387 P.2d 467 (1963).

The determination of the credibility of the witnesses and the weight to be given their testimony is for the jury. Big Butte Ranch, Inc. v. Grasmick, 91 Idaho 6, 415 P.2d 48 (1966).

Perjured Testimony.

Where two of state's witnesses in case in chief admitted having perjured themselves in preliminary proceedings, defendant was not entitled to mistrial since the testimony was admissible into evidence under §§ 9-201 to 9-203, although the admission of perjury is relevant to a determination of the credibility to be afforded that witness's testimony by the finder of fact. State v. Owens, 101 Idaho 632, 619 P.2d 787 (1979), overruled on other grounds, State v. Pierce, 107 Idaho 96, 685 P.2d 837 (Ct. App. 1984).

Religious Belief.

Dying declaration was admissible without preliminary proof that declarant believed in future state of rewards and punishments. State v. Williams, 36 Idaho 214, 209 P. 1068 (1922).

Cited State v. Larkins, 5 Idaho 200, 47 P. 945 (1897); Webster-Soule Farm v. Woodmansee's Adm'r, 36 Idaho 520, 211 P. 1090 (1922); State v. Farnsworth, 51 Idaho 768, 10 P.2d 295 (1932); Patrick v. Bisbee, 52 Idaho 369, 15 P.2d 730 (1932); State v. Dunn, 91 Idaho 870, 434 P.2d 88 (1967); State v. Griffith, 93 Idaho 76, 481 P.2d 34 (1969); Caldero v. Tribune Publishing Co., 98 Idaho 288, 562 P.2d 791 (1977); State v. Iwakiri, 106 Idaho 618, 682 P.2d 571 (1984); State v. Bolton, 119 Idaho 846, 810 P.2d 1132 (Ct. App. 1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 993 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 87 et seq.

ALR. — Limiting number of non-character witnesses in civil case. 5 A.L.R.3d 169.

Limiting number of non-character witnesses in criminal case. 5 A.L.R.3d 238.

Admissibility, in civil case, of expert or opinion evidence as to proposed witness' inability to testify. 11 A.L.R.3d 1360.

Competency of interested witness to testify to signature or handwriting of deceased. 13 A.L.R.3d 404.

Effect of witness' violation of order of exclusion. 14 A.L.R.3d 16.

Accused's right to interview witness held in public custody. 14 A.L.R.3d 652.

Disclosure of name, identity, address, occupation, or business of client as violation of attorney-client privilege. 16 A.L.R.3d 1047.

Propriety and prejudicial effect of trial court's limiting number of character or reputation witnesses. 17 A.L.R.3d 327.

Identity of witnesses whom adverse party plans to call to testify at civil trial, as subject of pretrial discovery. 19 A.L.R.3d 1114.

Necessity and admissibility of expert testimony as to credibility of witness. 20 A.L.R.3d 684.

Allowance of mileage or witness fees with respect to witnesses who are not called to testify or not permitted to do so when called. 22 A.L.R.3d 675.

Taking deposition or serving interrogatories in civil case as waiver of incompetency of witness. 23 A.L.R.3d 389.

Actionability of conspiracy to give or to procure false testimony or other evidence. 31 A.L.R.3d 1423.

Competency of non-expert's testimony based on sound alone as to speed of motor vehicle involved in accident. 33 A.L.R.3d 1405.

Competency of physician or surgeon from one locality to testify, in malpractice case, as to standard of care required of defendant practicing in another locality. 37 A.L.R.3d 420.

Validity of indictment where grand jury heard incompetent witness. 39 A.L.R.3d 1064.

Cross-examination of witness as to his mental state or condition, to impeach competency or credibility. 44 A.L.R.3d 1203.

Defense attorney as witness for his client in criminal case. 52 A.L.R.3d 887.

Prosecuting attorney as a witness in criminal case. 54 A.L.R.3d 100.

Applicability of attorney-client privilege to communications relating to drafting of documents. 55 A.L.R.3d 1322.

Tort or statutory liability for failure or refusal of witness to give testimony. 61 A.L.R.3d 1297.

Use of drugs as affecting competency or credibility of witness. 65 A.L.R.3d 705.

Propriety of consideration of credibility of witness in determining probable cause at state preliminary hearing. 84 A.L.R.3d 811.

Physician-patient privilege as applied to physician's testimony concerning wound required to be reported to public authority. 85 A.L.R.3d 1196.

Judge as witness in cause not on trial before him. 86 A.L.R.3d 633.

Trial jurors as witnesses in same state court or related case. 86 A.L.R.3d 781.

Court's witnesses (other than expert) in criminal prosecution. 16 A.L.R.4th 352.

Presence of unauthorized persons during state grand jury proceedings as affecting indictment. 23 A.L.R.4th 397.

Propriety and prejudicial effect of comments by counsel vouching for credibility of witness — state cases. 45 A.L.R.4th 602.

Witnesses: Child competency statutes. 60 A.L.R.4th 784.

Competency of one spouse to testify against other in prosecution for offense against third party as affected by fact that offense against spouse was involved in same transaction. 74 A.L.R.4th 277.

Prejudicial effect of improper failure to exclude from courtroom or to sequester or separate state's witnesses in criminal case. 74 A.L.R.4th 705.

Adverse presumption or inference based on failure to produce or examine codefendant or accomplice who is not on trial — Modern criminal cases. 76 A.L.R.4th 812.

Adverse presumption or inference based on party's failure to produce or question examining doctor — Modern cases. 77 A.L.R.4th 463.

Calling and interrogation of witnesses by court under rule 614 of the federal rules of evidence, 53 A.L.R. Fed. 498.

Presence of persons not authorized by rule 6(d) of Federal Rules of Criminal Procedure during session of grand jury as warranting dismissal of indictment. 68 A.L.R. Fed. 798.

Propriety and prejudicial effect of comments by council vouching for credibility of witness — federal cases. 78 A.L.R. Fed. 23.

§ 9-202. Who may not testify. — The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten (10) years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. At the time a child under the age of ten (10) years of age is called to testify in any court proceeding, the court shall conduct a hearing in chambers to determine whether the child qualifies as a witness under this section. In conducting such hearing the court shall take every reasonable means necessary to prevent intimidation or harassment of the child by the parties or their attorneys. The judge, rather than the parties, shall examine the child but he shall do so in the presence of the parties and he shall pose to the child any reasonable questions requested by the parties and previously submitted to the court. The judge may rephrase any questions so that the child is not intimidated.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted against an executor or administrator, upon a claim or demand against the estate of a deceased person, as to any communication or agreement, not in writing, occurring before the death of such deceased person.

History.

C.C.P. 1881, § 898; R.S., R.C., & C.L., § 5957; C.S., § 7936; am. 1927, ch. 51, § 1, p. 67; I.C.A., § 16-202; am. 1947, ch. 12, § 1, p. 12; 1965, ch. 113, § 1, p. 219; am. 1985, ch. 215, § 1, p. 524.

STATUTORY NOTES

Compiler's Notes.

The 1927, 1947 and 1965 acts amended subdivision 3. Prior to the 1927 amendment subdivision 3 read, "Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is

prosecuted against an executor or administrator, upon a claim or demand against the estate of a deceased person as to any matter of fact occurring before the death of such deceased person."

The 1927 act struck out the words "as to any matter of fact" and inserted in lieu thereof the words "as to any communication, or agreement, not in writing." The 1947 act restored the section to its original form.

The 1965 amendment struck out the words "matter of fact" and substituted "communication or agreement not in writing."

Section 2 of S.L. 1965, ch. 113, read: "The amendment incorporated herein shall be applicable only to those claims or demands against the estate of a deceased person arising subsequent to the effective date of this act."

Effective Dates.

Section 3 of S.L. 1965, ch. 113 declared an emergency. Approved March 11, 1965.

CASE NOTES

Actions to which inapplicable.

Binding effect of evidence.

Children.

Claims against decedents' estates.

— Actions to which applicable.

— Content of will.

— Persons to whom applicable.

— Right to inherit.

— Waiver of prohibition.

Communications with deceased persons prior to death.

Contradictory statements.

Deceased persons.

Harmless error.

In general.

Oral trusts.

Personal representatives.

Persons of unsound mind.

Actions to Which Inapplicable.

Where respondent, the owner of property stored on decedent's land, sued appellants, decedent's son and his wife, for conversion after they sold respondent's property, subsection (3) of this section did not apply because there was no claim against decedent's estate; decedent's son was not acting as a personal representative of the estate when he sold the portable buildings, and the estate was not a party in the conversion action. Carpenter v. Turrell, 148 Idaho 645, 227 P.3d 575 (2010).

Binding Effect of Evidence.

A board, court, or jury must accept as true the positive uncontradicted testimony of a credible witness, unless inherently improbable or rendered improbable by facts and circumstances adduced in evidence. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

Children.

In prosecution of defendant for the committing of lewd and lascivious acts on daughter, the latter, though only 12 years of age at the time of trial, was competent to testify where, on voir dire, it was disclosed that she was capable of receiving just impressions and relating them truly to the jury. State v. Madrid, 74 Idaho 200, 259 P.2d 1044 (1953).

Boys thirteen and sixteen years of age were competent witnesses in an arson trial. State v. Dunn, 91 Idaho 870, 434 P.2d 88 (1967).

There was no error in admitting the testimony of children aged five and six years who were confused and inconsistent in answering test questions on quantitative analyses, but who gave clear and consistent answers to questions concerning the offense with which the defendant was charged. State v. Ross, 92 Idaho 709, 449 P.2d 369 (1968), overruled on other grounds, Sharp v. Idaho Inv. Corp., 95 Idaho 113, 504 P.2d 383 (1972), and

overruled on other grounds, State v. McNeely, 162 Idaho 413, 398 P.3d 146 (2017).

Although the testimony of a nine year old child revealed a fair measure of embarrassment and lack of poise, and although with respect to the sequence of events her testimony was at times vague, she was unwavering in her testimony that the defendant took the alleged liberties with her and her friend, and, thus, the decision of the trial judge that the nine year old's indecisiveness went to weight as opposed to admissibility was not in error. State v. McKenney, 101 Idaho 149, 609 P.2d 1140 (1980).

Out-of-court statements by child who was an alleged victim of sexual abuse were not per se unreliable, or presumptively unreliable, on the ground that the trial court found the child incompetent to testify at trial. Idaho v. Wright, 497 U.S. 805, 110 S. Ct. 3139, 111 L. Ed. 2d 638 (1990).

This section, which provides that children under ten cannot be witnesses if they appear incapable of receiving just impressions of the facts or of relating them truly, is invalid to the extent that it attempts to prescribe admissibility of hearsay and is in conflict with Idaho Evid. R. 1102. State v. Poole, 124 Idaho 346, 859 P.2d 944 (1993).

Claims Against Decedents' Estates.

See Compiler's Notes regarding amendments of subdivision 3.

This section is drastic in its provision that claimants against estate can not be witnesses as to any matter of fact occurring before death of deceased. Goldensmith v. Worstell, 35 Idaho 679, 208 P. 836 (1922).

A presumption is indulged that a verdict obtained for the claimant for services to the deceased was not based on evidence of communications with the deceased, where there was other competent evidence sufficient to sustain the verdict. Hartley v. Bohrer, 52 Idaho 72, 11 P.2d 616 (1932).

Under this section, a claimant who sought to recover for services rendered in caring for the testator during his lifetime is a competent witness to testify as to the services performed and the value thereof. Hubbard v. Ball, 59 Idaho 78, 81 P.2d 73 (1938).

Where contractors, required to furnish two surety bonds on their contract with the government, appointed deceased to represent them in procuring the

required bonds but made it a condition of that appointment that the plaintiff share equally in the commissions on all bonds, and deceased wrote a memorandum agreement acknowledging plaintiff's right to share equally in commissions on all bonds, the memorandum was admissible in plaintiff's action against the deceased's executrix to recover a balance due on broker's commission, notwithstanding that it was signed only by the contractors and the deceased, since it was a written contract imposing duties and conferring benefits on and for the benefit of three parties. Clay v. Rossi, 62 Idaho 140, 108 P.2d 506 (1940).

This statute was evidently changed by the 1927 amendment for a purpose and that purpose must have been to relax instead of restrict the rule. By the amendment, there is no prohibition against a claimant testifying to occurrences in relation to or in connection with a contract or agreement in writing; such as delivery of the agreement, possession thereof, and payment or nonpayment, or rendition of services, or furnishing goods or material thereunder, and similar facts or circumstances. The prohibition, however extends to and comprehends contracts and agreements not in writing. Dowd v. Dowd, 62 Idaho 157, 108 P.2d 287 (1940).

Where the husband's contract to repay loans made by the wife was evidenced by writing, other facts involved in the transaction, including a release of a mortgage and return of the mortgage and note to the husband, and redelivery of the agreement to the wife, were collateral to the writing and did not in effect establish a new and independent contract; hence testimony concerning such facts was not inadmissible under the 1927 amendment, in the wife's action against the husband's estate as involving "communication or agreement not in writing." Dowd v. Dowd, 62 Idaho 157, 108 P.2d 287 (1940).

Plaintiffs, who brought action against executor of deceased executor to impress a trust, were not competent witnesses to testify as to what deceased executor told them concerning their interest in the estate. Burns v. Skogstad, 69 Idaho 227, 206 P.2d 765 (1949).

Where plaintiffs filed an action against estate of a deceased to set aside a deed, and court allowed plaintiffs to testify as to what occurred prior to death of deceased, over objection of the defendant, and trial court by its finding of fact decided that such evidence was incompetent, but further

found that there was sufficient evidence exclusive of questioned evidence to sustain its finding in favor of the plaintiff, such admission of incompetent evidence was held not reversible error, since there was sufficient evidence to establish facts involved. Dahlberg v. Johnson's Estate, 70 Idaho 51, 211 P.2d 764 (1949).

Action by stepchildren of decedent for specific performance of an alleged oral contract of the decedent to will to them all of her property is a claim or demand against the estate of the deceased person, and it was reversible error for the court to allow the plaintiffs to testify as to what occurred prior to death of decedent over objections by the defendants. Johnson v. Flatness, 70 Idaho 37, 211 P.2d 769 (1949).

Administrator can waive objection to testimony by plaintiff in suit on claim, either by failure to object or by cross-examination. Chapman v. Booth, 71 Idaho 359, 232 P.2d 668 (1951).

Incompetency of witness to testify under this section as to any matter of fact occurring before death of deceased was not waived by executrix's action in taking and filing discovery deposition even though deposition was not introduced in evidence. Thomas v. Thomas, 83 Idaho 86, 357 P.2d 935 (1960).

A right of action to enforce an agreement to devise certain real estate arose when the promisor died intestate and, where the promise was made prior to the effective date of the 1965 amendment to this section but the promisor died after, this section as amended in 1965 applied rather than the section as it existed when the promise was made. Quayle v. Mackert, 92 Idaho 563, 447 P.2d 679 (1968).

This section does not preclude all proof that could be submitted in husband's claim against wife's estate, as it does not prohibit others from testifying as to the facts. Estate of Carlson, 93 Idaho 258, 460 P.2d 393 (1969).

Where widow testified as to husband's donative intent in a suit brought by children of deceased claiming a share, the court held her testimony was not in error as the widow was not a party, assignor, or person on whose behalf this suit was brought, nor was it a claim or demand against the estate. Greene v. Cooke, 96 Idaho 48, 524 P.2d 176 (1973).

Alleged hearsay declarations of deceased were properly admitted when testified to by at least one witness who was not a party in proceeding seeking to compel defendants to convey real property. Smith v. Smith, 95 Idaho 825, 521 P.2d 143 (1974).

Subdivision 3. only applies to claims against the estate of the deceased person. Webster v. Magleby, 98 Idaho 326, 563 P.2d 50 (1977).

From an examination of subdivision 3. of this section, it appears that the statute bars (1) certain persons from testifying (2) in specified actions (3) as to certain communications and all three conditions must be satisfied in order for the evidence to be barred. Argyle v. Slemaker, 99 Idaho 544, 585 P.2d 954 (1978).

Statements concerning the state of a deed's description upon delivery do not involve a "communication or agreement, not in writing" within the meaning of subdivision 3. of this section. Argyle v. Slemaker, 99 Idaho 544, 585 P.2d 954 (1978).

Although testimony concerning oral agreements is barred in appropriate cases, subdivision 3. of this section does not bar testimony concerning a state of affairs or matters of fact occurring before the decedent's death. Argyle v. Slemaker, 99 Idaho 544, 585 P.2d 954 (1978).

— Actions to Which Applicable.

Under this section in an action against an administrator to establish a resulting trust against the decedent, the plaintiff in such action is disqualified from being a witness as to matters of fact occurring before the death of such deceased person. Rice v. Rigley, 7 Idaho 115, 61 P. 290 (1900).

Action by A and B against the estate of C to enforce specific performance of an alleged oral prospector's contract and seeking to hold the estate of C as trustee of interest in mining claim is a claim or demand against said estate, and plaintiffs are disqualified from being witnesses as to matters of fact occurring before death of C. Rice v. Rigley, 7 Idaho 115, 61 P. 290 (1900).

The phrase "claim or demand", as used in this section, embraces all rights of action for the establishment of a trust in land as well as claims or

demands for debts or damages against the estate of a deceased person. Rice v. Rigley, 7 Idaho 115, 61 P. 290 (1900).

Action in claim and delivery to which administrator is a party, and in which certain of the parties claim right to possession as assignees of a claim against the estate represented by administrator, which is secured by mortgage upon property in question, and in which action no relief is sought against estate, is not an action "upon a claim or demand against the estate of a deceased person" such as to preclude a party thereto from testifying. Cunningham v. Stoner, 10 Idaho 549, 79 P. 228 (1904).

This section does not apply where claim is not against estate, but is to establish claim against third party. Bertleson v. Van Deusen Co., 37 Idaho 199, 217 P. 983 (1923).

Action to cancel notes and mortgage, executed and delivered to deceased, held to be an action on a claim or demand against the estate. Kilbourn v. Smith, 38 Idaho 646, 224 P. 432 (1924).

Enforcement of equitable lien against property of decedent involves "claim or demand" against estate. Thurston v. Holden, 45 Idaho 724, 265 P. 697 (1928).

This section applies only in actions against personal representative of deceased. Servel v. Corbett, 49 Idaho 536, 290 P. 200 (1930).

This section has no application to one directly defending against a claim in favor of an estate. Finlayson v. Harris, 49 Idaho 697, 291 P. 1071 (1930); Chiara v. Amabile, 64 Idaho 55, 127 P.2d 795 (1942).

Action in claim and delivery to recover possession of certificate of deposit brought against an administratrix, wherein plaintiff claimed that decedent had given the certificate to him, was not an action upon a claim or demand against the estate. Pickerd v. Dahl, 64 Idaho 14, 127 P.2d 759 (1942).

— Content of Will.

It was not error to admit testimony about a decedent's will, where the evidence was properly admitted against a corporation and properly barred against the decedent's estate. April Beguesse, Inc. v. Rammell, 156 Idaho 500, 328 P.3d 480 (2014).

— Persons to Whom Applicable.

In action brought against a bank by depositor to recover amount of a deposit made by plaintiff's father in the name of plaintiff, cashier of the bank is not rendered incompetent to testify that, by the terms of the deposit made by the plaintiff's father, since deceased, plaintiff's father was to be permitted to check against the account. Greene v. Bank of Camas Prairie, 7 Idaho 576, 64 P. 888 (1901).

Party to a trust agreement with person since deceased cannot testify to the terms of such agreement in action involving title to property covered thereby. Coats v. Harris, 9 Idaho 458, 75 P. 243 (1904).

An officer or stockholder of a corporation is not a party within the meaning of this section. Webster-Soule Farm v. Woodmansee's Adm'r, 36 Idaho 520, 211 P. 1090 (1922).

A stockholder of a corporation is not a person in whose behalf an action or proceeding is prosecuted. Webster-Soule Farm v. Woodmansee's Adm'r, 36 Idaho 520, 211 P. 1090 (1922).

This section is not intended to prevent executor or administrator from being called as witness in support of a claim against estate, or to prevent plaintiff from being called in opposition to claim. Barton v. Dyer, 38 Idaho 1, 220 P. 488 (1923).

Where plaintiff, suing for malpractice against the estate of his deceased physician attempted to testify that he was not informed of the dangers inherent in the surgery he had undergone, his testimony was properly excluded under subdivision 3. of this section since he would be giving only his interpretation of the conversation, which the deceased could not rebut. Conrad v. St. Clair, 100 Idaho 401, 599 P.2d 292 (1979).

In an action to quiet title, the landowner's testimony as to the deceased's oral offer to purchase property was properly excluded under subdivision 3. of this section. Capps v. Wood, 110 Idaho 778, 718 P.2d 1216 (1986).

Where the decedent's spouse relied upon an oral agreement with the decedent that the house owned by the decedent would belong to both of them and he produced no written evidence whatsoever to establish his claim, the magistrate court correctly applied subdivision 3. of this section when it ruled the spouse's affidavit inadmissible for purposes of

determining the character of the property. Keeven v. Wakley, 110 Idaho 452, 716 P.2d 1224 (1986).

— Right to Inherit.

This section does not prevent an heir from testifying concerning his relationship and his right to inherit from deceased. In re Stone's Estate, 77 Idaho 63, 286 P.2d 329 (1955).

In a proceeding by alleged illegitimate son to establish right to inherit from father, who died in 1951, the plaintiff was entitled to testify concerning statement made by his mother prior to her death in 1941 as to who his father was, since the right asserted by the plaintiff could not have been asserted against the deceased father during his lifetime, and at the time of the statement the mother had no motive to distort the truth since there was no pending litigation. In re Stone's Estate, 77 Idaho 63, 286 P.2d 329 (1955).

In suit by son against the father's estate, it was not error to allow testimony of son as to conversations with his mother occurring prior to her demise. Nielson v. Davis, 96 Idaho 314, 528 P.2d 196 (1974).

— Waiver of Prohibition.

The disqualification of a witness or testimony respecting communications with the deceased may be waived by an executor or administrator, and a waiver of the statutory prohibition against introducing testimony of the communications with a deceased person results from the representative's cross-examination of witnesses beyond the scope of the direct examination on the same subject. Hartley v. Bohrer, 52 Idaho 72, 11 P.2d 616 (1932).

Where provisions of this statute were waived by both parties, the sustaining of objection to certain telephone conversation did not constitute prejudicial error. Sweeney v. Hanmer, 66 Idaho 462, 162 P.2d 387 (1945).

Communications with Deceased Persons Prior to Death.

Testimony was allowed where the witnesses testified as to the contents of a written memorandum, but not to the specific communications made by the deceased. Simons v. Simons, 134 Idaho 824, 11 P.3d 20 (2000).

Contradictory Statements.

Although the jury in a rape case believed that the prosecutrix made contradictory statements with respect to the acts complained of, it did not necessarily follow that it must reject all of her testimony as untrue. State v. Harp, 31 Idaho 597, 173 P. 1148 (1918).

Deceased Persons.

Admitting a decedent's brother's affidavit testifying to the brother's alleged oral agreements with the decedent was an abuse of discretion, because (1) the brother was a purported assignor of parties to a suit to declare the rights of the decedent's widow and children in the decedent's limited liability company, (2) the children made a claim against the decedent's estate, (3) the testimony concerned a pre-death oral communication, (4) no writing substantiated the testimony, and (5) the testimony did not concern a state of affairs or matters of fact. Slavens v. Slavens, 161 Idaho 198, 384 P.3d 962 (2016).

Harmless Error.

Admission of testimony in violation of this section is not ground for reversal when it only goes to the proof of facts admitted in pleadings. Toulouse v. Burkett, 2 Idaho 184, 10 P. 26 (1886).

Admission of incompetent evidence is not reversible error, if other competent evidence is introduced to sustain finding of facts. Dahlberg v. Johnson's Estate, 70 Idaho 51, 211 P.2d 764 (1949); Nielson v. Davis, 96 Idaho 314, 528 P.2d 196 (1974).

In General.

This section did not apply in an action by the widow and administratrix of the deceased against the former partner of the deceased and there was no claim or demand against the estate of the deceased. Ridley v. VanderBoegh, 95 Idaho 456, 511 P.2d 273 (1973).

In an action to quiet title as a result of a complex series of transfers among members of a family, some now dead, where a third party complaint by one of the defendants was an action to establish or enforce a trust against the estate of a deceased person which was also a defendant in the original action, parol evidence concerning a missing deed was improperly excluded under this section since objection was not made by a representative of the

estate of the deceased person nor a party having an interest therein. Smith v. Smith, 95 Idaho 477, 511 P.2d 294 (1973).

District court did not abuse its discretion by admitting evidence concerning a beneficiary's intent when signing a promissory note on behalf of a relative because the action did not concern a demand against an estate or a claim against an executor or administrator under subdivision 3; moreover, the evidence did not constitute hearsay because it was offered for the purpose of showing the beneficiary's state of mind. Rowan v. Riley, 139 Idaho 49, 72 P.3d 889 (2003).

Oral Trusts.

Plaintiff in suit to establish oral trust against real estate of decedent could not testify concerning same. Ferrell v. McVey, 71 Idaho 339, 232 P.2d 134 (1951).

Personal Representatives.

Personal representatives should not be allowed to avoid application of this section by seizing assets of the estate for their personal benefit and thereby forcing the heirs to initiate legal action to recover the misappropriated assets. Kolouch v. First Sec. Bank, 128 Idaho 186, 911 P.2d 779 (Ct. App. 1996).

Persons of Unsound Mind.

Person is not of unsound mind within meaning of statute if he can comprehend obligation of oath and is capable of giving fairly correct account of what he has seen or heard. State v. Simes, 12 Idaho 310, 85 P. 914 (1906); State v. Sims, 35 Idaho 505, 206 P. 1045 (1922).

Female who is ravished is not necessarily disqualified from testifying in prosecution for rape, although such prosecution is based on her mental incapacity to consent to act complained of; but in such case the question of her competency to testify in view of her insanity is to be determined in same manner as competency of other witnesses. State v. Simes, 12 Idaho 310, 85 P. 914 (1906); State v. Cosler, 39 Idaho 519, 228 P. 277 (1924).

Allowing witness to testify without examination as to mental capacity is not reversible error where record discloses that witness was competent. State v. Sims, 35 Idaho 505, 206 P. 1045 (1922).

Unsoundness of mind is relative term. There is no valid reason why one who is capable of receiving and relating impressions should be ordinarily prohibited from testifying, and statute must necessarily have included only those who are so incapable. State v. Cosler, 39 Idaho 519, 228 P. 277 (1924).

Cited Sprouse v. Magee, 46 Idaho 622, 269 P. 993 (1928); Finlayson v. Harris, 49 Idaho 697, 291 P. 1071 (1930); State v. Orr, 53 Idaho 452, 24 P.2d 679 (1933); Collord v. Cooley, 92 Idaho 789, 451 P.2d 535 (1969); Grasser v. First Sec. Bank of Idaho, 96 Idaho 754, 536 P.2d 749 (1975); Caldero v. Tribune Publishing Co., 98 Idaho 288, 562 P.2d 791 (1977); State v. Iwakiri, 106 Idaho 618, 682 P.2d 571 (1984); Capps v. Wood, 117 Idaho 614, 790 P.2d 395 (Ct. App. 1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 160 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 87 et seq.

Idaho Code § 9-203

§ 9-203. Confidential relations and communications. — There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, nor does this exception apply to any case of lewd and lascivious conduct or attempted lewd and lascivious conduct where either party would otherwise be protected by this privilege.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) Nothing herein contained shall be deemed to preclude physicians from testifying at all cases of physical injury to a person where it appears the injury has been caused as a result of domestic violence.

(C) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(D) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(E) That if the patient be dead and during his lifetime had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

7. Any parent, guardian or legal custodian shall not be forced to disclose any communication made by their minor child or ward to them concerning matters in any civil or criminal action to which such child or ward is a

party. Such matters so communicated shall be privileged and protected against disclosure; excepting, this section does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this section apply to any case of physical injury to a minor child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, guardian or legal custodian.

History.

C.C.P. 1881, § 899; R.S., R.C., & C.L., § 5958; C.S., § 7937; I.C.A., § 16-203; am. 1963, ch. 104, § 1, p. 324; am. 1963, ch. 122, § 1, p. 351; am. 1967, ch. 121, § 1, p. 265; am. 1971, ch. 36, § 1, p. 81; am. 1972, ch. 29, § 1, p. 42; am. 1979, ch. 151, § 1, p. 465; am. 1996, ch. 302, § 1, p. 994.

STATUTORY NOTES

Cross References.

Competency of husband and wife in criminal proceedings, § 19-3002.

Privileges of all witnesses, § 9-1302.

Effective Dates.

Section 2 of S.L. 1971, ch. 36 declared an emergency. Approved February 27, 1971.

Section 2 of S.L. 1972, ch. 29 declared an emergency retroactive to and including January 1, 1972. Approved February 28, 1972.

CASE NOTES

Binding effect of evidence.

Communications between attorneys.

Communications with attorney.

— Following refusal to take case.

— Prior to employment.

— Waiver of privilege.

Communications with clergy.

Communications with physician.

— Existence of professional relationship.

— Waiver of privilege.

Construction.

Criminal actions.

Reporters.

Testimony of spouses.

— Waiver of privilege.

Binding Effect of Evidence.

A board, court, or jury must accept as true the positive uncontradicted testimony of a credible witness, unless inherently improbable or rendered improbable by facts and circumstances adduced in evidence. Pierstorff v. Gray's Auto Shop, 58 Idaho 438, 74 P.2d 171 (1937).

Communications Between Attorneys.

Communications between attorneys for the same client are protected by the attorney-client privilege in the absence of any showing of waiver. State v. Iwakiri, 106 Idaho 618, 682 P.2d 571 (1984).

Communications with Attorney.

Third person who, by accident or by design of attorney, overhears confidential communications between client and attorney may be compelled to divulge what he so hears. Perry v. State, 4 Idaho 224, 38 P. 655 (1894).

Communications which pass between one who is merely conveyancer or friendly advisor of grantor or grantee in a deed are not privileged communications under this subdivision. Later v. Haywood, 12 Idaho 78, 85 P. 494 (1906).

When attorney is called as witness and declines to answer a question or produce letters or documents on the ground that same are privileged under provisions of subdivision 2 of this section, burden is upon him to show sufficient facts and circumstances to establish the general privileged

character of the communications or documents. The rule does not necessitate attorney disclosing the contents of documents or import of communications, but rather devolves upon him the necessity of showing the relation existing between him and his client at the time communications or documents were received, and circumstances under which he came into possession of same, and that they were obtained by him while acting as attorney for client. In re Niday, 15 Idaho 559, 98 P. 845 (1908).

Use of words "without the consent" of client makes no change in common law, and this section is mere restatement of common law. Sprouse v. Magee, 46 Idaho 622, 269 P. 993 (1928).

The admission in evidence of a confidential communication between attorney and client is harmless where the defendant testified to the same state of facts. State v. Johnston, 62 Idaho 601, 113 P.2d 809 (1941).

The privilege against self-incrimination, as well as the attorney-client privilege, refers only to communicative and not "real" evidence, and, in a murder prosecution, an order for the defense counsel to produce evidence, which consisted of items burglarized from victim's home which had been found by defendant's family, was proper, even though defendant contends that he was, in effect, ordered to incriminate himself through his attorney. State v. Dillon, 93 Idaho 698, 471 P.2d 553 (1970), cert. denied, 401 U.S. 942, 91 S. Ct. 947, 28 L. Ed. 2d 223 (1971).

A wife's attorney's general statements, such as that wife contacted him, that he arranged to meet with husband's accountant, and so on, were clearly not privileged since they were not attorney-client communications; nor was any of the affidavit which discussed the meeting with the accountant privileged, for it did not discuss communications, and even if it did they would not be privileged since they were made in the presence of a third person. Compton v. Compton, 101 Idaho 328, 612 P.2d 1175 (1980).

Order granting independent conflict counsel access to the state appellate public defender's (SAPD) client file on defendant violated defendant's attorney-client privilege, because it gave counsel carte blanche to access all of the SAPD's files relating to its representation of defendant, which undoubtedly contained some privileged information. Hall v. State, 155 Idaho 610, 315 P.3d 798 (2013).

— Following Refusal to Take Case.

Any communication between an attorney and a potential client subsequent to the attorney's refusal to handle the individual's case falls outside the scope of the attorney-client privilege and is admissible. State v. Iwakiri, 106 Idaho 618, 682 P.2d 571 (1984).

— Prior to Employment.

Communications between attorney and client made in the course of professional employment are protected by the attorney-client privilege; the privilege extends to communications made with a view toward employing the attorney by a potential client, whether or not actual employment results. State v. Iwakiri, 106 Idaho 618, 682 P.2d 571 (1984).

— Waiver of Privilege.

As at common law, the "consent" of the client to disclosure of confidential communications under subdivision 2 may be either express or implied from the conduct of the client, and when such consent is found, the privilege is said to have been "waived." Skelton v. Spencer, 98 Idaho 417, 565 P.2d 1374 (1977), cert. denied, 434 U.S. 1014, 98 S. Ct. 730, 54 L. Ed. 2d 758 (1978).

Where a client who was challenging a settlement agreement testified as to her communications with her attorneys throughout the settlement process thereby making privileged communications an issue of her defense, she waived the attorney-client privilege for all communications relevant to the settlement process and the conduct of her former attorneys, and those attorneys were properly permitted to testify with regard to such communications. Skelton v. Spencer, 98 Idaho 417, 565 P.2d 1374 (1977), cert. denied, 434 U.S. 1014, 98 S. Ct. 730, 54 L. Ed. 2d 758 (1978).

Subdivision 2 of this section provides that an attorney cannot be examined regarding confidential communications made in the course of employment "without the consent of his client." The statute thus makes it clear that the client is the holder of the privilege; accordingly, only the client can waive the privilege. State v. Iwakiri, 106 Idaho 618, 682 P.2d 571 (1984).

Communications with Clergy.

Where testimony complained of, a deposition of a Catholic priest read into evidence in a divorce proceeding, does not relate to any confession made to the witness in the course of discipline enjoined by the Church but merely consisted of friendly conversations, the priest was not an incompetent witness under our privileged communication statute. Angleton v. Angleton, 84 Idaho 184, 370 P.2d 788 (1962).

Communications with Physician.

Any information acquired by attending physicians at an operation or gathered from an examination of diseased parts, removed by the operation a considerable time afterwards, is privileged information and cannot be given in evidence without consent of patient. Jones v. Caldwell, 23 Idaho 467, 130 P. 995 (1913).

All statements made to physician by patient for purpose of determining patient's condition are privileged, although they have nothing to do with patient's treatment. Brayman v. Russell & Pugh Lumber Co., 31 Idaho 140, 169 P. 932 (1917).

It is well settled that information based upon observation comes within statute, as well as information based upon statements of patient. Fritcher v. Kelley, 34 Idaho 471, 201 P. 1037 (1921).

Physician cannot be cross-examined as to extent and permanency of plaintiff's injuries when such testimony is objected to as privileged. Nelson v. Johnson, 41 Idaho 697, 243 P. 647 (1925).

In an action between husband and wife wherein she testified he had infected her with a venereal disease, she may be compelled in spite of this section to testify what her physician told her with respect thereto. Radermacher v. Radermacher, 59 Idaho 716, 87 P.2d 461 (1938).

Questioning of doctor as to what information he secured from patient, as result of his examination at the hospital, was held improper, as privileged, since information was secured by doctor for purpose of treating his patient. Gardner v. Hobbs, 69 Idaho 288, 206 P.2d 539 (1949).

This statute should not be extended by the court to prohibit pertinent disclosure, upon agreement by personal representative and all heirs, after a patient's death of information gained by a physician or surgeon during the

decedent's lifetime. In re Groan's Estate, 83 Idaho 568, 366 P.2d 831 (1961).

In a divorce action the court properly sustained objections to the husband's questions to the wife's psychiatrist, subpoenaed by him, concerning his psychiatric findings concerning her, offered on the question of the wife's fitness for custody of the children. Barker v. Barker, 92 Idaho 204, 440 P.2d 137 (1968).

— Existence of Professional Relationship.

It is immaterial in application of this statute that physician was not hired by patient but patient's employer. Brayman v. Russell & Pugh Lumber Co., 31 Idaho 140, 169 P. 932 (1917).

Consulting physician employed to take and interpret an X-ray picture of a fractured arm comes within the terms of the statute. Shaw v. Nampa, 31 Idaho 347, 171 P. 1132 (1918).

If relation of physician and patient has ceased to exist at the time information is obtained, such information is not privileged. Bressan v. Herrick, 35 Idaho 217, 205 P. 555 (1922).

— Waiver of Privilege.

Plaintiff servant, by testifying that one of the results of accident was hernia, did not waive privilege, where he did not testify that a physician had attended him. Federal Mining & Smelting Co. v. Dalo, 252 F. 356 (9th Cir. 1918).

Stipulation for life insurance waiving provision of this section disqualifying physician from testifying to any information acquired by him while attending his patient is valid, and entitles both beneficiary in the policy and insurer, in action on policy, to call and examine physician who attended insured during his last sickness, and to exact information which, except for such waiver, would be regarded as a privileged communication. Trull v. Modern Woodmen of Am., 12 Idaho 318, 85 P. 1081 (1906).

Patient may, under provisions of this section, waive her right to secrecy in respect to one of her physicians; such waiver does not operate as waiver of her right to object to the testimony of another of her physicians called by opposing party in the action. Jones v. Caldwell, 20 Idaho 5, 116 P. 110

(1911), overruled on other grounds, Labonte v. Davidson, 31 Idaho 644, 175 P. 588 (1918).

Patient does not waive privilege of statute by testifying he followed physician's advice. Brayman v. Russell & Pugh Lumber Co., 31 Idaho 140, 169 P. 932 (1917).

Right to waive privilege as to testimony of physician survives and may be exercised after death of patient. Sprouse v. Magee, 46 Idaho 622, 269 P. 993 (1928). See In re Groan's Estate, 83 Idaho 568, 366 P.2d 831 (1961).

In proceeding to revoke will, privilege affecting testimony of physician and attorney of testatrix could be waived by executor. Marker v. McCue, 50 Idaho 462, 297 P. 401 (1931).

Where privileged communications are, in the main, brought out on cross-examination beyond matters elicited in chief and when they are proven by other competent witnesses there is no error in their admission. By cross-examining beyond the scope of the direct examination counsel waives benefit of statute. Hartley v. Bohrer, 52 Idaho 72, 11 P.2d 616 (1932).

In an action to recover for disability benefits under life policy where the insured, in the application for the policy, stipulated that he waived all provisions of law forbidding his physician from testifying as to any information acquired by him in attending or examining him, the trial court was justified in ordering that certain X-ray pictures, taken by physician in the insured's employ, be submitted before trial to the insurance company's physician for examination. Murphy v. Mutual Life Ins. Co., 62 Idaho 362, 112 P.2d 993 (1941).

In suit for personal injuries growing out of mutual combat in which plaintiff called one doctor as a witness, plaintiff did not thereby waive the privilege of objecting to the testimony of any other physician. Harrington v. Hadden, 69 Idaho 22, 202 P.2d 236 (1949).

Witness, who testified in malpractice action, that spinal anesthesia was currently in use by staff physicians in obstetrical cases and produced charts of other patients, could be questioned as to whether the cases referred to were all obstetrical cases, or for other reasons were not comparable to plaintiff's case. Walker v. Distler, 78 Idaho 38, 296 P.2d 452 (1956).

The testimony of a physician can be elicited only upon grant of a waiver, and upon the death of the patient such right to waive passes to those properly regarded as standing in his place or representing him. In re Goan's Estate, 83 Idaho 568, 366 P.2d 831 (1961).

Anyone claiming through the decedent, personal representative, or some, but not all, of the heirs may waive this privilege in respect to medical testimony. In re Goan's Estate, 83 Idaho 568, 366 P.2d 831 (1961).

Since no privilege existed at common law, privilege being a creation of statute, and privilege being personal to the patient, the statute contemplating waiver by the patient himself, upon death of the patient, becomes inoperative; therefore, it would no longer bind the physician or surgeon to the privilege. In re Goan's Estate, 83 Idaho 568, 366 P.2d 831 (1961).

Construction.

The use of the words "without the consent" of the client in subdivision 2 made no change in the common law and this subsection should be interpreted in accordance with the common law. Skelton v. Spencer, 98 Idaho 417, 565 P.2d 1374 (1977), cert. denied, 434 U.S. 1014, 98 S. Ct. 730, 54 L. Ed. 2d 758 (1978).

Criminal Actions.

Testimony of nurses who attended defendant at hospital was admissible in manslaughter proceeding since privilege as to communications under this section is restricted to civil cases. State v. Bounds, 74 Idaho 136, 258 P.2d 751 (1953).

Communications between defendant and his personal physician are not privileged in a criminal action since privilege as to such communications under this section is limited to civil actions. State v. Coburn, 82 Idaho 437, 354 P.2d 751 (1960).

Reporters.

A newsman testifying in a civil suit does not have a privilege against disclosure of the identity of a confidential source. Caldero v. Tribune Publishing Co., 98 Idaho 288, 562 P.2d 791, cert. denied, 434 U.S. 930, 98 S. Ct. 418, 54 L. Ed. 2d 291 (1977).

New testimonial privileges are disfavored since they obstruct the search for truth. Caldero v. Tribune Publishing Co., 98 Idaho 288, 562 P.2d 791, cert. denied, 434 U.S. 930, 98 S. Ct. 418, 54 L. Ed. 2d 291 (1977).

Testimony of Spouses.

Wife of defendant may be examined as witness on the part of plaintiff without the consent of her husband, where there are defendants other than husband against whom a separate judgment may be rendered; but in such case court should instruct the jury that testimony of the wife should apply only to such other defendants. Shields v. Ruddy, 3 Idaho 148, 28 P. 405 (1891).

Party to divorce action, by calling the other as witness, consents to his testifying. Boeck v. Boeck, 29 Idaho 639, 161 P. 576 (1916).

In habeas corpus proceeding by husband against wife to obtain custody of their minor children, husband may cross-examine wife as adverse party or may examine her as his own witness. Mabbett v. Mabbett, 34 Idaho 611, 202 P. 1057 (1921).

Where declarations of deceased husband do not come within rule of privileged communications, testimony concerning them is admissible against surviving wife without her consent. Hess v. Hess, 41 Idaho 359, 239 P. 956 (1925).

All ancient reasons for exclusion of testimony of husband or wife, whether well founded or not, are merged in statutory declaration of such incompetency. Hess v. Hess, 41 Idaho 359, 239 P. 956 (1925).

Where objection was made to testimony of witness on ground witness was common-law wife of defendant on trial for commission of lewd acts upon the 10-year-old child of such witness, before permitting such witness to testify regarding material facts, a determination should have been made as to the existence or nonexistence of such relation. State v. Riley, 83 Idaho 346, 362 P.2d 1075 (1961).

The clear expressed intent of the legislature must be given effect in the permitting of a wife to testify against her husband in cases of criminal violence upon one by the other and there is no occasion to construe this to mean that a serious wrong against the minor child of a wife is a crime

against the wife sufficient to remove her disqualification as a witness. State v. Riley, 83 Idaho 346, 362 P.2d 1075 (1961).

The amendment of subdivision 1 of this section to exclude from the privilege cases "of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents" does not amend § 19-3002 by implication so as to permit a wife to testify against her husband in a prosecution for lewd conduct with a minor female. State v. McGonigal, 89 Idaho 177, 403 P.2d 745 (1965).

An involuntary manslaughter conviction was not reversible for the alleged error in permitting the defendant's ex-wife and assertedly present common-law wife to testify against him where defendant's only objections to her testimony were on grounds other than that of marital privilege. State v. Chaffin, 92 Idaho 629, 448 P.2d 243 (1968), overruled on other grounds, State v. Broadhead, 120 Idaho 141, 814 P.2d 401 (1991).

Those who claim privileged marital communication between themselves and their common-law spouse must demonstrate the existence of a common-law marriage by showing a mutual assumption of marital rights, duties or obligations as provided in § 32-201. Still v. State, 97 Idaho 375, 544 P.2d 1145 (1976).

A divorce prior to trial terminates the incompetency of one spouse to testify against the other; divorce, however, does not terminate the privilege afforded marital communications made during the existence of the marriage. State v. Fowler, 101 Idaho 546, 617 P.2d 850 (1980), cert. denied, 450 U.S. 916, 101 S. Ct. 1359, 67 L. Ed. 2d 341 (1981).

Defendant's former wife was competent to testify, in the prosecution of defendant for assault with a deadly weapon, that defendant possessed a revolver at the time of the assault, that the gun was kept in defendant's nightstand, and that she moved the gun to a different location. State v. Fowler, 101 Idaho 546, 617 P.2d 850 (1980), cert. denied, 450 U.S. 916, 101 S. Ct. 1359, 67 L. Ed. 2d 341 (1981).

Knowledge of the possessions of one spouse and their location is generally not a spousal communication. State v. Fowler, 101 Idaho 546, 617 P.2d 850 (1980), cert. denied, 450 U.S. 916, 101 S. Ct. 1359, 67 L. Ed. 2d 341 (1981).

The court properly allowed the defendant's ex-wife to testify to marital communications where no objection based on the marital communications privilege was interposed at any point during her testimony. State v. Nab, 113 Idaho 168, 742 P.2d 423 (Ct. App. 1987).

— Waiver of Privilege.

The admissibility of a spouse's testimony about the acts of the other spouse will not be considered on appeal as a violation of the confidential marital communication privilege if there is no objection to it during trial. State v. Anspaugh, 97 Idaho 519, 547 P.2d 1124 (1976).

Cited State v. Orr, 53 Idaho 452, 24 P.2d 679 (1933); Lebak v. Nelson, 62 Idaho 96, 107 P.2d 1054 (1940); Skelly v. Sunshine Mining Co., 62 Idaho 192, 109 P.2d 622 (1941); State v. McKenney, 101 Idaho 149, 609 P.2d 1140 (1980); Dalton v. Idaho Dairy Prods. Comm'n, 107 Idaho 6, 684 P.2d 983 (1984).

OPINIONS OF ATTORNEY GENERAL

Interviews of suspected victims of child abuse, abandonment and neglect without parental consent or notification do not violate the parent's right to privacy in family relationships and the responsibility of notification is that of the department of health and welfare. OAG 93-2.

The responsibility of notifying parents of child protective investigations is that of the department of health and welfare and is not required until such time as the department deems it necessary to ensure that the best interests and needs of the child are met. OAG 93-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 273 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 297 et seq.

ALR. — Construction and application of fiduciary duty exception to attorney-client privilege. 47 A.L.R.6th 255.

Waiver of evidentiary privilege by inadvertent disclosure — Federal law. 159 A.L.R. Fed. 153.

Views of United States supreme court as to attorney-client privilege. 159 A.L.R. Fed. 243.

Idaho Code § 9-203A

§ 9-203A. Confidential communications with accountants. — 1. Any licensed public accountant, or certified public accountant, cannot, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

2. Notwithstanding the provisions of subsection 1 of this section, as part of a proceeding or investigation conducted by the board of accountancy or quality review program required, implemented, conducted or approved by the board of accountancy, a certified public accountant or a licensed public accountant may be examined and may disclose any communication made by a client to the certified public accountant or licensed public accountant, or any advice given by that accountant in the course of his professional employment.

3. Any person participating in a proceeding or investigation by the board of accountancy or in the conduct of a quality review program required, implemented, conducted or approved by the board of accountancy shall only be entitled to use the information disclosed by the certified public accountant or licensed public accountant for purposes related to the proceeding, investigation or quality review program and otherwise cannot, without the consent of the accountant's client disclose or be examined regarding the information obtained from the accountant in the course of the proceeding, investigation or quality review program except in connection with the proceeding, investigation or quality review program. In addition, any person participating in the proceeding, investigation or quality review program cannot, without the consent of the accountant's client, disclose or be examined regarding their analysis of the information provided by the accountant pursuant to the proceeding, investigation or quality review program, except in connection with the proceeding, investigation or quality review program.

4. The word "client" used herein shall be deemed to include a person, a corporation or an association. The word "communication" as used herein shall be deemed to include but shall not be limited to, reports, financial statements, tax returns, or other documents relating to the client's personal

and/or business financial status, whether or not said reports or documents were prepared by the client, the licensed public accountant or certified public accountant, or other person who prepared said documents at the direction of and under the supervision of said accountants.

History.

I.C., § 9-203A, as added by 1978, ch. 262, § 1, p. 570; am. 1989, ch. 149, § 1, p. 359.

STATUTORY NOTES

Cross References.

Board of accountancy, § 54-203 et seq.

CASE NOTES

Testimony Not Privileged.

This section is intended only to prevent the disclosure of confidential information imparted to an accountant, not to prevent all disclosure of an individual's financial affairs; accordingly, the district court erred in refusing the bookkeeper's testimony. Capps v. Wood, 110 Idaho 778, 718 P.2d 1216 (1986).

Cited Capps v. Wood, 117 Idaho 614, 790 P.2d 395 (Ct. App. 1990).

§ 9-204. Judge or juror may testify. — The judge himself, or any juror, may be called as a witness by either party, but in such case it is in the discretion of the court to order the trial to be postponed or suspended, and to take place before another judge or jury.

History.

C.C.P. 1881, § 900; R.S., R.C., & C.L., § 5959; C.S., § 7938; I.C.A., § 16-204.

CASE NOTES

Cited State v. Camp, 134 Idaho 662, 8 P.3d 657 (Ct. App. 2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 264 et seq.

C.J.S. — 98 C.J.S., Witnesses, §§ 191-195, 199.

ALR. — Competency of prosecuting attorney as a witness. 54 A.L.R.3d 100.

§ 9-205. Interpreters. — In any civil or criminal action in which any witness or a party does not understand or speak the English language, or who has a physical disability which prevents him from fully hearing or speaking the English language, then the court shall appoint a qualified interpreter to interpret the proceedings to and the testimony of such witness or party. Upon appointment of such interpreter, the court shall cause to have the interpreter served with a subpoena as other witnesses, and such interpreter shall be sworn to accurately and fully interpret the testimony given at the hearing or trial to the best of his ability before assuming his duties as an interpreter. The court shall determine a reasonable fee for all such interpreter services which shall be paid out of the district court fund.

History.

I.C., § 9-205, as added by 1975, ch. 64, § 2, p. 130; am. 1994, ch. 215, § 1, p. 672; am. 2010, ch. 235, § 2, p. 542.

STATUTORY NOTES

Cross References.

District court fund, § 31-867.

Interpreters' fees, § 9-1603.

Prior Laws.

Former § 9-205, which comprised C.C.P. 1881, § 901; R.S., R.C., & C.L., § 5960; C.S., § 7938; I.C.A., § 16-205, was repealed by S.L. 1975, ch. 64, § 1.

Amendments.

The 2010 amendment, by ch. 235, substituted "physical disability" for "physical handicap" in the first sentence.

CASE NOTES

Accuracy of translation.

Drug addiction by interpreter.

Duty of court.

Failure to swear interpreter.

Illiterate defendant.

Necessity question of law.

State's right to examine defendant.

Accuracy of Translation.

An interpreter is considered a witness in the sense that the accuracy of her translation is a question of fact for the jury which may be disputed by counsel. State v. Puente-Gomez, 121 Idaho 702, 827 P.2d 715 (Ct. App. 1992).

Where defendant has failed to indicate that interpreter was not qualified or that her translations were somehow deficient, she is presumed to have translated accurately. State v. Puente-Gomez, 121 Idaho 702, 827 P.2d 715 (Ct. App. 1992).

Drug Addiction by Interpreter.

Where the victim of a homicide was a Chinese, unfamiliar with the English language, and his purported dying statement was interpreted by a Chinese interpreter and taken down in shorthand by a stenographer, evidence of the fact that the interpreter was addicted to the use of opium or other drugs was competent for the purpose of showing the mental balance of such interpreter, and his capacity to remember the questions that were propounded by the prosecuting attorney through him to the deceased, and the deceased's answers thereto as the admissibility of such purported dying declaration depended on the truthfulness and accuracy of the interpretation of such questions and answers. State v. Fong Loon, 29 Idaho 248, 158 P. 233 (1916).

Duty of Court.

In defendant's assault on an officer trial, having appointed an interpreter to be readily available to assist defendant if necessary, the district court was under no obligation to constantly monitor the use which defendant and trial

counsel made of the interpreter. State v. Alsanea, 138 Idaho 733, 69 P.3d 153 (Ct. App. 2003).

Failure to Swear Interpreter.

Failure to swear an interpreter is not reversible error per se, and the testimony provided by an unsworn interpreter is not nullified by a lack of oath; failure to require an oath of an interpreter does not require reversal in the absence of a suitable objection at trial. State v. Puente-Gomez, 121 Idaho 702, 827 P.2d 715 (Ct. App. 1992).

Illiterate Defendant.

Although defendant was illiterate in both English and Spanish, he understood the proceedings, and therefore, there was no error or abuse of discretion when the court refused to appoint an interpreter. State v. Hernandez, 120 Idaho 785, 820 P.2d 380 (Ct. App. 1991).

Necessity Question of Law.

Question whether or not witness requires an interpreter is a question for court. State v. Bogris, 26 Idaho 587, 144 P. 789 (1914).

State's Right to Examine Defendant.

Because of claim that he cannot understand English, the state cannot be deprived of the right to cross-examine the defendant in a criminal action, and the state may call witnesses to prove the defendant can speak English, which evidence should be taken, however, out of the presence of the jury. The right to have such evidence heard by the court alone is waived, however, unless request that the jury be excused is made. State v. Bogris, 26 Idaho 587, 144 P. 789 (1914).

Cited Murillo v. State, 144 Idaho 449, 163 P.3d 238 (Ct. App. 2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 269.

C.J.S. — 98 C.J.S., Witnesses, § 399.

ALR. — Disqualification for bias of one offered as interpreter of testimony, 6 A.L.R.4th 158.

§ 9-206. Deceased or absent witnesses — Transcribed testimony admissible. — The testimony of a witness who testified at the trial in an action or proceeding in any district court of the State of Idaho, when transcribed and certified to be true or correct by the court reporter reporting such testimony at such trial or proceeding, shall be admissible at any subsequent trial between the same parties and relating to the same subject matter, when such witness is deceased, absent from the state or otherwise unavailable or unable to testify as a witness.

History.

1945, ch. 16, § 1, p. 25.

CASE NOTES

Deceased Witness of Other Case.

Transcribed testimony of since deceased witness before industrial accident board was properly ruled inadmissible in murder prosecution, although the sanity of accused was in controversy, the witness was another victim and was examined both on direct and cross-examination; the parties and issues involved were not the same, and neither the state nor the accused had any opportunity to cross-examine the witness. State v. Gish, 87 Idaho 341, 393 P.2d 342 (1964).

Where the parties and issues in the prior proceedings are not the same as in the proceeding where the deceased witness' testimony is sought to be introduced, the trial court is vested with discretion as to the admission of the previous testimony. State v. Nagel, 98 Idaho 129, 559 P.2d 308 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 904 et seq.

§ 9-207. Admissibility of expressions of apology, condolence and sympathy. — (1) In any civil action brought by or on behalf of a patient who experiences an unanticipated outcome of medical care, or in any arbitration proceeding related to, or in lieu of, such civil action, all statements and affirmations, whether in writing or oral, and all gestures or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, made by a health care professional or an employee of a health care professional to a patient or family member or friend of a patient, which relate to the care provided to the patient, or which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence for any reason including, but not limited to, as an admission of liability or as evidence of an admission against interest.

(2) A statement of fault which is otherwise admissible and is part of or in addition to a statement identified in subsection (1) of this section shall be admissible.

(3) For the purposes of this section, unless the context otherwise requires: (a) "Health care professional" means any person licensed, certified, or registered by the state of Idaho to deliver health care and any clinic, hospital, nursing home, ambulatory surgical center or other place in which health care is provided. The term also includes any professional corporation or other professional entity comprised of such health care professionals as permitted by the laws of Idaho.

(b) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected, hoped for or desired result.

History.

I.C., § 9-207, as added by 2006, ch. 204, § 1, p. 624.

Idaho Code Ch. 3

Chapter 3
PUBLIC WRITINGS

Sec.

9-301, 9-302. [Repealed.]

9-303. Statutes — Classification — Public or private.

9-304. Proof of Statutes Act — Publications covered.

9-305. Proof of Statutes Act — Uniformity of interpretation.

9-306. Proof of Statutes Act — Short title.

9-307. Certified copies of foreign laws and writings — Admissibility.

9-308. Oral evidence of common law — Reports of decisions.

9-309. Recitals in statutes — Conclusiveness.

9-310. Judicial record defined.

9-311. Public writings — Classification.

9-312. Authentication of judicial record.

9-313. Authentication of judicial record of foreign country.

9-314. Compared copy of foreign record — Admissibility in evidence.

9-315. Proof of other official documents.

9-316. Official Reports as Evidence Act.

9-317. Official reports as evidence — Notice before trial.

9-318. Official reports as evidence — Cross-examination.

9-319. Official reports as evidence — Uniformity of interpretation of act.

9-320. Official reports as evidence — Short title of act.

9-321. Public record of private writing — How proved.

9-322. Entries in public and official books — Effect as prima facie evidence.

9-323. Transcript of docket of justice of another state — Admissibility.

9-324. Proof of transcript — Certificate of justice and clerk — Proof of judgment by justice in person.

9-325. Certified copies of writings.

9-326. Certificate of purchase or location of lands — Effect as evidence.

9-327. Entries by officers — Effect as evidence.

9-328. Photographic or digital retention of records — Disposition of originals.

9-329, 9-330. [Repealed.]

9-331. County officials replacing documents or books — Manner. [Repealed.]

9-331A. Photographic or digital retention of county records — Disposition of originals. [Repealed.]

9-332. Destruction of originals when not less than one year old. [Repealed.]

9-333. Admissibility in evidence of copies of destroyed records.

9-334. Copies of records to be in duplicate — One copy for display purposes, the other placed in fireproof vault.

9-335 — 9-349. [Repealed.]

9-349A. [Amended and Redesignated.]

9-350 — 9-352. [Repealed.]

§ 9-301. Public writings — Right to inspect and take copy. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 902, R.S., R.C., & C.L., § 5965; C.S., § 7940; I.C.A., § 16-301, was repealed by S.L. 1990, ch. 213, § 2, effective July 1, 1990. For present law, see § 74-101 et seq.

§ 9-302. Furnishing of certified copy — Duty of officer having custody — Copy as evidence — Fees. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 903, R.S., R.C., & C.L., § 5966; C.S., § 7941; I.C.A., § 16-302, was repealed by S.L. 1990, ch. 213, § 2, effective July 1, 1990. For present comparable law, see § 74-101 et seq.

§ 9-303. Statutes — Classification — Public or private. — Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History.

C.C.P. 1881, § 904; R.S., R.C., & C.L., § 5967; C.S., § 7942; I.C.A., § 16-303.

CASE NOTES

General law defined.

Judicial records.

Special law defined.

General Law Defined.

A general law is one framed in general terms restricted to no locality and operating upon all alike. Mix v. Board of Comm'rs, 18 Idaho 695, 112 P. 215 (1910).

In determining whether or not a law is general or special, the court will look to its substance and necessary operation as well as to its form and phraseology. Mix v. Board of Comm'rs, 18 Idaho 695, 112 P. 215 (1910).

A statute is general if its terms apply to, and its provisions operate upon, all persons and subject-matters in like situations. Jones v. Power County, 27 Idaho 656, 150 P. 35 (1915).

Judicial Records.

In broad sense, register of actions, files, minutes, orders, decree, judgment, judgment book, and docket are "judicial records." Evans v. District Court, 50 Idaho 60, 293 P. 323 (1930).

Special Law Defined.

A special law is one that applies only to a special locality or to an individual, or to a number of individuals selected out of a class to which they belong. Mix v. Board of Comm'rs, 18 Idaho 695, 112 P. 215 (1910).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1337 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-304. Proof of Statutes Act — Publications covered. — Printed books or pamphlets purporting on their face to be the session or other statutes of any of the United States, or the territories thereof, or of any foreign jurisdiction, and to have been printed and published by the authority of any such state, territory or foreign jurisdiction or proved to be commonly recognized in its courts, shall be received in the courts of this state as prima facie evidence of such statutes.

History.

1935, ch. 149, § 1, p. 367.

CASE NOTES

Effect of section.

Necessity of pleading and proof.

Presumption as to foreign law.

Sufficiency of proof.

Effect of Section.

Books published under authority of a state, territory or foreign country and purporting to contain the statutes, code or other written law thereof, or proved to be commonly admitted in their respective tribunals, are admissible in Idaho as evidence of such law. Moore v. Pooley, 17 Idaho 57, 104 P. 898 (1909).

The latest official edition of the Napoleonic Code in French, together with the last English translation of the French Civil Code, were properly admitted in evidence under this section. Barthel v. Johnston, 92 Idaho 94, 437 P.2d 366 (1968).

Necessity of Pleading and Proof.

The supreme court can not take judicial notice of laws of sister state. They must be proved as prescribed by this section. Cummings v. Lowe, 52 Idaho 1, 10 P.2d 1059 (1932); Mason v. Pelkes, 57 Idaho 10, 59 P.2d 1087, cert. denied, 299 U.S. 615, 57 S. Ct. 319, 81 L. Ed. 453 (1936).

In a divorce proceeding by wife in Idaho filed subsequent to an interlocutory judgment of divorce in favor of the husband in California, the contention of the husband that because of the peculiar California statutory law and construction of the California courts an interlocutory judgment of divorce in California was final could not be sustained, where the husband neither pleaded nor proved the California law, hence Idaho law controlled. Newell v. Newell, 77 Idaho 355, 293 P.2d 663, cert. denied, 352 U.S. 871, 77 S. Ct. 95, 1 L. Ed. 2d 76 (1956).

Presumption as to Foreign Law.

In absence of proof to the contrary, court will assume that the same law prevails in a sister state as that which prevails here. Moore v. Pooley, 17 Idaho 57, 104 P. 898 (1909); Maloney v. Winston Bros. Co., 18 Idaho 740, 111 P. 1080 (1910); Mason v. Pelkes, 57 Idaho 10, 59 P.2d 1087, cert. denied, 299 U.S. 615, 57 S. Ct. 319, 81 L. Ed. 453 (1936).

Sufficiency of Proof.

When a party to an action requests that the trial court notice the statutory law of a sister state, the trial court shall have the authority to ascertain that law and proof of a sister state's statutory law may be achieved by introducing a semi-official compilation of that law. White v. White, 94 Idaho 26, 480 P.2d 872 (1971).

Cited State v. Williams, 103 Idaho 635, 651 P.2d 569 (Ct. App. 1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1337 et seq.

§ 9-305. Proof of Statutes Act — Uniformity of interpretation. — This act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History.

1935, ch. 149, § 2, p. 367.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1935, ch. 149 compiled as §§ 9-304 to 9-306.

§ 9-306. Proof of Statutes Act — Short title. — This act may be cited as the Uniform Proof of Statutes Act.

History.

1935, ch. 149, § 3, p. 367.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1935, ch. 149 compiled as §§ 9-304 to 9-306.

The Uniform Proof of Statutes Act was withdrawn by the National Conference of Commissioners on Uniform State Laws in 1966.

§ 9-307. Certified copies of foreign laws and writings — Admissibility. — A copy of the written law, or other public writing, of any state, territory or country, attested by the certificate of the officer having charge of the original, under the public seal of the state, territory or country, is admissible as evidence of such law or writing.

History.

C.C.P. 1881, § 907; R.S., R.C., & C.L., § 5970; C.S., § 7945; I.C.A., § 16-305.

CASE NOTES

In General.

Properly certified certificates of birth, death, marriage, collective heirship, and notoriety from French officials were properly admitted in evidence on the question of heirship of residents of France claiming to be heirs at law of deceased French legatees of an Idaho testator, who died during the pendency of the administration of the testator's estate. Barthel v. Johnston, 92 Idaho 94, 437 P.2d 366 (1968).

Cited Mason v. Pelkes, 57 Idaho 10, 59 P.2d 1087 (1936); Newell v. Newell, 77 Idaho 355, 293 P.2d 663 (1956).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1337 et seq.

§ 9-308. Oral evidence of common law — Reports of decisions. — The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of another state, territory or foreign country, as are also printed and published books of reports of decisions of the courts of such state, territory or country, commonly admitted in such courts.

History.

C.C.P. 1881, § 908; R.S., R.C., & C.L., § 5971; C.S., § 7946; I.C.A., § 16-306.

CASE NOTES

Cited Mason v. Pelkes, 57 Idaho 10, 59 P.2d 1087 (1936); Newell v. Newell, 77 Idaho 355, 293 P.2d 663 (1956).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1332 et seq.

Idaho Code § 9-309

§ 9-309. Recitals in statutes — Conclusiveness. — The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

History.

C.C.P. 1881, § 909; R.S., R.C., & C.L., § 5972; C.S., § 7947; I.C.A., § 16-307.

§ 9-310. Judicial record defined. — A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding.

History.

C.C.P. 1881, § 910; R.S., R.C., & C.L., § 5973; C.S., § 7948; I.C.A., § 16-308.

CASE NOTES

Public writings.

Records required.

Public Writings.

Judgment rolls, files, papers and orders in a case are "judicial records," "public writings," and "public records," within the meaning of the statutes. Evans v. District Court, 50 Idaho 60, 293 P. 323 (1930).

Records Required.

Proceedings of the district court should be recorded either in the minutes or in the reporter's notes, whichever is appropriate to the nature of the proceedings had. Darrar v. Joseph, 91 Idaho 210, 419 P.2d 211 (1966).

Cited Smith v. Smith, 95 Idaho 477, 511 P.2d 294 (1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1332 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-311. Public writings — Classification. — Public writings are divided into four classes:

1. Laws.

2. Judicial records.

3. Other official documents.

4. Public records kept in this state of private writings.

History.

C.C.P. 1881, § 905; R.S., R.C., & C.L., § 5968; C.S., § 7943; I.C.A., § 16-309.

STATUTORY NOTES

Cross References.

Authentication of judicial records, § 9-312.

CASE NOTES

Official highway maps.

"Raw notes."

Official Highway Maps.

In a wrongful death action arising out of a traffic accident, the admission into evidence of a simplified map of an interchange for the limited purpose of illustrating the manner in which the automobile accident occurred was not barred by the hearsay rule or the best evidence rule, where the simplified version was prepared by a qualified person and where the original official highway maps had been introduced into evidence. Dawson v. Olson, 97 Idaho 274, 543 P.2d 499 (1975).

"Raw Notes."

Trial court erred in holding that, as a matter of law, "raw notes" ("handwritten notes," "raw minutes") taken by clerk of the board of county

commissioners during meetings of the county board of commissioners could not be public writings. Fox v. Estep, 118 Idaho 454, 797 P.2d 854 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1342 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-312. Authentication of judicial record. — A judicial record of this state, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof. That of another state or territory may be proved by the attestation of the clerk and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

History.

C.C.P. 1881, § 911; R.S., R.C., & C.L., § 5974; C.S., § 7949; I.C.A., § 16-310.

CASE NOTES

Changing or altering record.

Effect of certified copies.

Full faith and credit.

Presumption and sufficiency of foreign judgment.

Proof of prior convictions.

Changing or Altering Record.

Where the official record of a court of another state had been properly authenticated, evidence that might add to, change, alter or impeach the record is not admissible. Stafford v. Field, 70 Idaho 331, 218 P.2d 338 (1950).

Effect of Certified Copies.

Copies certified by clerk as provided for in this section have same effect in court as originals when they are produced and their execution is proved; it is not necessary to first prove execution of the papers filed and recorded before the certifications can be received in evidence. Kramer v. Settle, 1 Idaho 485 (1873).

Full Faith and Credit.

In the prosecution of an alleged recidivist, where the prior convictions took place in another state, certified copies of the judgment of the prior convictions, properly authenticated, were admissible in evidence and entitled to "full faith and credit" which would have been accorded to them in the state where they were rendered. State v. Prince, 64 Idaho 343, 132 P.2d 146 (1942).

Presumption and Sufficiency of Foreign Judgment.

Where the judgments of the courts of another state convicting the accused of felonies established that such courts had a presiding judge, a clerk, and a seal, the presumption obtained that such courts were of general jurisdiction, and that such judgments were final and were proof and were the "best evidence" of what they showed on their face, establishing the jurisdiction of the courts in such state. State v. Prince, 64 Idaho 343, 132 P.2d 146 (1942).

Proof of Prior Convictions.

Where a certified copy of a federal judgment of conviction of someone with the defendant's name complied with the requirements of this section regarding the proper authentication of a judicial record and was admitted without objection, and photocopied records of a mug shot and fingerprint card of the defendant, which were certified by the official custodian of records at a federal prison were also introduced into evidence, the jury could, and did, find that the defendant in the present prosecution and the person involved in the federal conviction were the same person for the purpose of enhanced punishment as a persistent violator of the law. State v. Martinez, 102 Idaho 875, 643 P.2d 555 (Ct. App. 1982).

A judgment of conviction from a California court may be admitted and proved by satisfying the relevant provisions of the Idaho Evid. R. 902 and does not also need to satisfy the requirements of this section or 28 U.S.C.S. § 1738. This section is just one method by which a public record may be certified in accordance with Idaho Evid. R. 902(4). State v. Howard, 150 Idaho 471, 248 P.3d 722 (2011).

Cited State v. Johnson, 86 Idaho 51, 383 P.2d 326 (1963); Smith v. Smith, 95 Idaho 477, 511 P.2d 294 (1973); State v. Howard, — Idaho —, — P.3d —, 2010 Ida. App. LEXIS 5 (Ct. App. Jan. 26, 2010).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1332 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-313. Authentication of judicial record of foreign country. — A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge, or presiding magistrate, that the person making the attestation is the clerk of the court or the legal keeper of the record, and in either case that the signature of such person is genuine, and that the attestation is in due form. The signature of the chief judge, or presiding magistrate, must be authenticated by the certificate of the minister or ambassador, or a consul, vice consul, or consular agent of the United States in such foreign country.

History.

C.C.P. 1881, § 912; R.S., R.C., & C.L., § 5975; C.S., § 7950; I.C.A., § 16-311.

CASE NOTES

Cited Barthel v. Johnston, 92 Idaho 94, 437 P.2d 366 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1336.

C.J.S. — 32A C.J.S., Evidence, § 1167 et seq.

§ 9-314. Compared copy of foreign record — Admissibility in evidence. — A copy of the judicial record of a foreign country is also admissible in evidence, upon proof:

1. That the copy offered has been compared by the witness with the original and is an exact transcript of the whole of it.

2. That such original was in the custody of the clerk of the court, or other legal keeper of the same; and 3. That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it be the record of a court, or if there be no such seal, or if it be not the record of a court, by the signature of the legal keeper of the original.

History.

C.C.P. 1881, § 913; R.S., R.C., & C.L., § 5976; C.S., § 7951; I.C.A., § 16-312.

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1336.

C.J.S. — 32A C.J.S., Evidence, § 1167 et seq.

§ 9-315. Proof of other official documents. — Other official documents may be proved as follows:

1. Acts of the executive of this state, by the records; and of the United States, by the records of the departments of the United States, certified by an officer or employee of those departments, showing that the document is a true and correct copy of the original held by that department. They may also be proved by public documents, printed by the order of the legislature or congress, or either house thereof.

2. The proceedings of the legislature of this state, or of congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order.

3. The acts of the executive, or the proceedings of the legislature, of another state or territory in the same manner.

4. The acts of the executive, or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof, in some public act of the executive of the United States.

5. Acts of a municipal corporation of this state, or of a board or department thereof, by a copy, certified by the legal keeper thereof, or by a printed book, published by the authority of such corporation.

6. Documents of any other class in this state, by the original, or by a copy, certified by the legal keeper thereof.

7. Documents of any other class from another state or territory, by the original, or by a copy, certified by the legal keeper thereof, in such a manner that the court is satisfied that the document is, in all likelihood, a copy of an official document from another state or territory.

8. Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate under seal, of the country or sovereign, that the document is a valid and subsisting

document of such country, and that the copy is duly certified by the officer having the legal custody of the original.

9. Documents in the departments of the United States government, by the certificate of the legal custodian thereof.

10. The above requirements notwithstanding, if in the discretion of the court the document, or copy thereof, whichever is being submitted for admission into evidence, is an unaltered official document of any agency or department of the state of Idaho or of any other state, then such document may be admitted into evidence.

History.

C.C.P. 1881, § 914; R.S., R.C., & C.L., § 5977; C.S., § 7952; I.C.A., § 16-313; am. 1980, ch. 294, § 1, p. 765.

STATUTORY NOTES

Cross References.

Gasoline, lubricating oil and fuel oil adulterating and misbranding, certificate of chemist of department of public welfare as prima facie evidence, § 37-2508.

CASE NOTES

Acts of municipal corporation.

Certified copies of foreign documents.

Fingerprint cards.

Official highway maps.

Prima facie evidence.

Sufficiency of certification.

Acts of Municipal Corporation.

Under this statute proof of publication of ordinances as a prerequisite to their introduction in evidence is not required. State v. Dawe, 31 Idaho 796, 177 P. 393 (1918).

On appeal from municipal court, neither district nor supreme court will take judicial notice of city ordinance. State v. Egli, 41 Idaho 422, 238 P. 514 (1925).

Certified Copies of Foreign Documents.

Properly certified certificates of birth, death, marriage, collective heirship, and notoriety from French officials were properly admitted in evidence on the question of heirship of residents of France claiming to be heirs at law of deceased French legatees of an Idaho testator, who died during the pendency of the administration of the testator's estate under subdivision 8 of this section. Barthel v. Johnston, 92 Idaho 94, 437 P.2d 366 (1968).

Fingerprint Cards.

Although the district court erred in admitting the fingerprint cards over defendant's objection for a lack of foundation, where there was a multitude of other sources of information from which the jury would have come to the same conclusion regarding defendant's guilt, the admission of the fingerprint evidence was harmless. State v. Norton, 134 Idaho 875, 11 P.3d 494 (Ct. App. 2000).

Official Highway Maps.

In a wrongful death action arising out of a traffic accident, the admission into evidence of a simplified map of an interchange for the limited purpose of illustrating the manner in which the automobile accident occurred was not barred by the hearsay rule or the best evidence rule, where the simplified version was prepared by a qualified person and where the original official highway maps had been introduced into evidence. Dawson v. Olson, 97 Idaho 274, 543 P.2d 499 (1975).

Prima Facie Evidence.

Certificate in the form prescribed by law and purporting to be made by proper custodian is prima facie evidence of the genuineness of city ordinance, entitling it to be admitted in evidence without other proof; its admissibility is not affected by lapse of time or fact that person who made it was not in office at time it was offered in evidence. State v. Dawe, 31 Idaho 796, 177 P. 393 (1918).

Defendant alleged he was prejudiced by the admission of the exhibit showing that the state board of highway directors fixed and designated 35 miles per hour as the reasonable, safe, prima facie speed limit upon a certain portion of U.S. Highway 30. He could not make a showing of prejudice in view of the uncontradicted evidence to the effect that the section of highway where the collision occurred was in an "urban district" and, as such, 35 miles per hour is the prima facie speed limit thereon. State v. Wendler, 83 Idaho 213, 360 P.2d 697 (1961).

Sufficiency of Certification.

The certificate of the county recorder of the county where defendant was alleged to have been previously convicted of a felony that he had compared a photocopy of fingerprints purporting to be of those of the person convicted with the original and found them to be identical, without any showing that the county recorder was the keeper of fingerprint records, was insufficient to qualify such photocopy for admission in evidence. State v. Polson, 92 Idaho 615, 448 P.2d 229 (1968), cert. denied, 395 U.S. 977, 89 S. Ct. 2129, 23 L. Ed. 2d 765 (1969).

A proper foundation was laid for the introduction into evidence of certain fingerprint cards by a police officer who identified the cards as a part of the permanent records of the police department which it was his duty to keep and maintain as custodian. State v. Polson, 93 Idaho 912, 478 P.2d 292 (1970), cert. denied, 402 U.S. 930, 91 S. Ct. 1527, 28 L. Ed. 2d 863 (1971).

Where a certified copy of a federal judgment of conviction of someone with the defendant's name complied with the requirements of § 9-312 regarding the proper authentication of a judicial record and was admitted without objection, and photocopied records of a mug shot and fingerprint card of the defendant, which were certified by the official custodian of records at a federal prison, were also introduced into evidence, the jury could, and did, find that the defendant in the present prosecution and the person involved in the federal conviction were the same person for the purpose of enhanced punishment as a persistent violator of the law. State v. Martinez, 102 Idaho 875, 643 P.2d 555 (Ct. App. 1982).

Cited Williams v. Sherman, 36 Idaho 494, 212 P. 971 (1922); Kleinschmidt v. Scribner, 54 Idaho 185, 30 P.2d 362 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1270 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-316. Official Reports as Evidence Act. — Written reports or findings of fact made by officers of this state, on a matter within the scope of their duty as defined by statute, shall, insofar as relevant, be admitted as evidence of the matters stated therein.

History.

1939, ch. 105, § 1, p. 174.

CASE NOTES

Hearsay.

The accident report of the investigating officer may be used by him to refresh his memory during the trial notwithstanding the fact that it included hearsay evidence. Bell v. O'Connor Transp. Ltd., 94 Idaho 406, 489 P.2d 439 (1971), overruled on other grounds, Owen v. Burcham, 100 Idaho 441, 599 P.2d 1012 (1979).

Although a police accident report may be used, in a civil trial, by an officer to refresh his memory, it may not be admitted as substantive evidence since it may contain many unreliable hearsay conclusions and speculations of the officer and criminal charges which may or may not have been sustained, and to the extent Bell v. O'Connor Transp. Ltd., 94 Idaho 406, 489 P.2d 439 (1971) holds to the contrary it is overruled. Owen v. Burcham, 100 Idaho 441, 599 P.2d 1012 (1979).

Cited Leliefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983).

RESEARCH REFERENCES

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-317. Official reports as evidence — Notice before trial. — Such report or finding shall be admissible only if the party offering it has delivered a copy of it, or so much thereof as may relate to the controversy, to the adverse party a reasonable time before trial, unless in the opinion of the trial court the adverse party has not been unfairly surprised by the failure to deliver such copy.

History.

1939, ch. 105, § 2, p. 174.

§ 9-318. Official reports as evidence — Cross-examination. — Any adverse party may cross-examine any person making such reports or findings or any person furnishing information used therein; but the fact that such testimony may not be obtainable shall not affect the admissibility of the report or finding, unless, in the opinion of the court, the adverse party is unfairly prejudiced thereby.

History.

1939, ch. 105, § 3, p. 174.

CASE NOTES

Designation of highway speed limit.

Hearsay.

Veterans' administration reports.

Designation of Highway Speed Limit.

Defendant alleged he was prejudiced by the admission of the exhibit showing that the state board of highway directors fixed and designated 35 miles per hour as the reasonable, safe, prima facie speed limit upon a certain portion of the U.S. Highway 30. He could not make a showing of prejudice in view of the uncontradicted evidence to the effect that the section of highway where the collision occurred was in an "urban district" and, as such, 35 miles per hour is the prima facie speed limit thereon. State v. Wendler, 83 Idaho 213, 360 P.2d 697 (1961).

Hearsay.

Where the accident report of the investigating officer included hearsay evidence, it may be used by him to refresh his memory during the trial. Bell v. O'Connor Transp. Ltd., 94 Idaho 406, 489 P.2d 439 (1971), overruled on other grounds, Owen v. Burcham, 100 Idaho 441, 599 P.2d 1012 (1979).

Although a police accident report may be used, in a civil trial, by an officer to refresh his memory, it may not be admitted as substantive evidence since it may contain many unreliable hearsay conclusions and

speculations of the officer and criminal charges which may or may not have been sustained, and to the extent Bell v. O'Connor Transp. Ltd., 94 Idaho 406, 489 P.2d 439 (1971) holds to the contrary it is overruled. Owen v. Burcham, 100 Idaho 441, 599 P.2d 1012 (1979).

Veterans' Administration Reports.

An objection on the basis of hearsay was not sustainable to an official report of the veterans' administration. Johnson v. Boise Cascade Corp., 93 Idaho 107, 456 P.2d 751 (1969).

§ 9-319. Official reports as evidence — Uniformity of interpretation of act. — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

1939, ch. 105, § 4, p. 174.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1939, ch. 105 compiled as §§ 9-316 to 9-320.

§ 9-320. Official reports as evidence — Short title of act. — This act may be cited as the Uniform Official Reports as Evidence Act.

History.

1939, ch. 105, § 5, p. 174.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1939, ch. 105 compiled as §§ 9-316 to 9-320.

The Official Reports as Evidence Act was withdrawn by the National Conference of Commissioners on Uniform Law in 1966.

§ 9-321. Public record of private writing — How proved. — A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

History.

C.C.P. 1881, § 915; R.S., R.C., & C.L., § 5978; C.S., § 7953; I.C.A., § 16-314.

STATUTORY NOTES

Cross References.

Certified copy of record of conveyance admissible in evidence, § 9-410.

Transfers of real property to be in writing, exception, §§ 9-503, 9-504.

CASE NOTES

Certification.

A certified copy of a record of a sister state, not certified by the officer who is the legal keeper of the records of that state, is not admissible in evidence. Kleinschmidt v. Scribner, 54 Idaho 185, 30 P.2d 362 (1934).

§ 9-322. Entries in public and official books — Effect as prima facie evidence. — Entries in public or other official books or records, made in the performance of his duty by a public officer of this state, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

History.

C.C.P. 1881, § 916; R.S., R.C., & C.L., § 5979; C.S., § 7954; I.C.A., § 16-315.

CASE NOTES

Effect of unauthorized change.

Minutes of county commissioners.

Effect of Unauthorized Change.

Prima facie evidence of facts stated in public record may be overcome by evidence, clear and convincing, that unauthorized changes or interlineations have been made. Hudson v. Kootenai Power Co., 44 Idaho 423, 258 P. 169 (1927); Jackson v. Lee, 47 Idaho 589, 277 P. 548 (1929).

Minutes of County Commissioners.

Clerk of the board, under provisions of § 31-712 (redesignated as subsection (3) of § 31-710), is required to enter the order calling a special meeting upon records of said board, and under this section the record copy becomes prima facie evidence of facts stated in such order. Black Canyon Irrigation Dist. v. Marple, 19 Idaho 176, 112 P. 766 (1911).

RESEARCH REFERENCES

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-323. Transcript of docket of justice of another state — Admissibility. — A transcript from the record or docket of a justice of the peace of another state or territory of a judgment rendered by him, of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the justice and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

History.

C.C.P. 1881, § 917; R.S., R.C., & C.L., § 5980; C.S., § 7955; I.C.A., § 16-316.

CASE NOTES

Foreign Judgments.

Where a foreign judgment had been certified in substantial conformity with the requirements of state and federal statutes, it was entitled to be admitted in evidence. Nadel v. Campbell, 18 Idaho 335, 110 P. 262 (1910).

Idaho Code § 9-324

§ 9-324. Proof of transcript — Certificate of justice and clerk — Proof of judgment by justice in person. — There must be attached to the transcript a certificate of the justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk or prothonotary of the county in which the justice resided at the time of rendering the judgment, under seal of the county, or the seal of the court of common pleas, or county court, or court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a justice of the peace in the county, and that the signature is genuine. Such judgment, proceedings and jurisdiction may also be proved by the justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

History.

C.C.P. 1881, § 918; R.S., R.C., & C.L., § 5981; C.S., § 7956; I.C.A., § 16-317.

CASE NOTES

Cited Nadel v. Campbell, 18 Idaho 335, 110 P. 262 (1910).

§ 9-325. Certified copies of writings. — Whenever a copy of a writing is certified for the purposes of evidence, the certificate must state in substance, that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be a clerk of a court having a seal, under the seal of such court.

History.

C.C.P. 1881, § 919; R.S., R.C., & C.L., § 5982; C.S., § 7957; I.C.A., § 16-318.

CASE NOTES

Cited State v. Marsh, 153 Idaho 360, 283 P.3d 107 (Ct. App. 2011).

RESEARCH REFERENCES

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-326. Certificate of purchase or location of lands — Effect as evidence. — A certificate of purchase, or of location, of any lands in this state, issued or made in pursuance of any law of the United States, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

History.

C.C.P. 1881, § 920; R.S., R.C., & C.L., § 5983; C.S., § 7958; I.C.A., § 16-319.

CASE NOTES

Homestead Entries.

Homestead is recognized as private property by this section and certificate of entry is primary evidence that holder thereof is owner of land therein described. Johnson v. Oregon S. L. R.R., 7 Idaho 355, 63 P. 112 (1900); Fall Creek Sheep Co. v. Walton, 24 Idaho 760, 136 P. 438 (1913).

RESEARCH REFERENCES

C.J.S. — 32A C.J.S., Evidence, § 1098 et seq.

§ 9-327. Entries by officers — Effect as evidence. — An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

History.

C.C.P. 1881, § 921; R.S., R.C., & C.L., § 5984; C.S., § 7959; I.C.A., § 16-320.

STATUTORY NOTES

Cross References.

Entries in public and official books and records, prima facie evidence, § 9-322.

Official reports as evidence, §§ 9-316 to 9-320.

CASE NOTES

Best Evidence.

The record thereof is the best evidence of judgments and court proceedings generally. State v. Sedam, 62 Idaho 26, 107 P.2d 1065 (1940).

§ 9-328. Photographic or digital retention of records — Disposition of originals. — Any state officer may receive or retain documents filed or recorded in his office on media other than paper, provided that the media comply with the standards set forth in this section. The originals of paper documents may be disposed of in accordance with the provisions of this section.

(1) A state officer may receive, file or record documents in his office in paper form. When permitted by law or administrative rule, a state officer may alternatively receive, file or record documents which are transmitted on other media or by electronic means, provided that the medium or means of transmittal is secure against undetected additions, deletions or alterations of documents during transmittal. Such media and electronic means include, but are not limited to, facsimile transmissions (FAX), magnetic tape or disk, photographic film, optical disk and an electronically transmitted data stream.

(2) A state officer may retain a document in a different form or medium from that in which it is received, provided that the form or medium in which the document is retained results in a permanent record which may be accurately reproduced during the period for which the document must be retained.

(3) If a document is received in paper form or as an image of a paper document, *e.g.* film, FAX or other digitized image, it must be retained in a form or medium which permits accurate reproduction of the document in paper form. If the medium chosen for retention is photographic, all film used for capture or retention of images must meet the quality standards of the American national standards institute (ANSI). If the medium chosen for retention is digital, it must be secure against unauthorized or undetected alteration or deletion. If the medium itself does not preclude alteration or deletion, the custodial state officer must insure that a document can be restored from a backup medium which may or may not be digital.

(4) If a document is received as a data stream, it must be retained in a system which is secure against unauthorized or undetected alteration or deletion of data, and which provides for periodic backup of data for off-site

storage. The system must permit the document to be readily and intelligibly reproduced on paper.

(5) If a document is received in paper form or as an image of a paper document, and if the receiving state officer retains it in another form or medium as permitted in subsection (3) of this section, then the original of the document may be disposed of or returned to the sender, provided that such disposition or return is done pursuant to statute or an administrative rule promulgated under section 67-5751, Idaho Code.

(6) A document retained by a state officer in any form or medium permitted under this section shall be deemed to be an original public record for all purposes. A reproduction or copy of such a document, certified by the state officer, shall be deemed to be a transcript or certified copy of the original, and shall be admissible before any court or administrative hearing.

History.

I.C., § 9-328, as added by 1992, ch. 165, § 2, p. 529; am. 1997, ch. 74, § 1, p. 154.

STATUTORY NOTES

Prior Laws.

Former § 9-328, which comprised 1943, ch. 81, § 1, p. 165; am. 1976, ch. 42, § 1, p. 90, was repealed by S.L. 1992, ch. 165, § 1.

Compiler's Notes.

The American national standards institute oversees the creation, promulgation, and use of thousands of norms and guidelines that directly impact governments and businesses in nearly every sector. See *http://ansi.org*.

Section 67-5751, referred to in subsection (5), was repealed by S.L. 2012, ch. 216, § 4, effective July 1, 2012. For present similar provisions, see § 67-4131.

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1320 et seq.

C.J.S. — 32A C.J.S., Evidence, §§ 1250, 1356.

§ 9-329, 9-330. Photographed records — Effect as records — Microphotographing of instruments for records. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1943, ch. 81, § 2, p. 165; am. 1976, ch. 42, §§ 2, 3, p. 90, were repealed by S.L. 1992, ch. 165, § 1.

§ 9-331. County officials replacing documents or books — Manner. [Repealed.]

Repealed by S.L. 2014, ch. 237, § 1, effective July 1, 2014.

History.

1957, ch. 206, § 1, p. 433; am. 1996, ch. 13, § 1, p. 32.

§ 9-331A. Photographic or digital retention of county records — Disposition of originals. [Repealed.]

Repealed by S.L. 2014, ch. 237, § 2, effective July 1, 2014.

History.

I.C., § 9-331A, as added by 1996, ch. 13, § 2, p. 32.

§ 9-332. Destruction of originals when not less than one year old. [Repealed.]

Repealed by S.L. 2014, ch. 237, § 3, effective July 1, 2014.

History.

1957, ch. 206, § 2, p. 433; am. 1969, ch. 126, § 1, p. 388; am. 1989, ch. 120, § 1, p. 267.

§ 9-333. Admissibility in evidence of copies of destroyed records. — The photostatic, photographic, microphotographic or microfilmed copy of any such record destroyed or disposed of as herein authorized, or a certified copy thereof, shall be admissible in evidence in any court or proceeding, and shall have the same force and effect as though the original record had been produced and proved. It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History.

1957, ch. 206, § 3, p. 433.

§ 9-334. Copies of records to be in duplicate — One copy for display purposes, the other placed in fireproof vault. — Whenever any record or document is copied or reproduced by microphotographic or microfilm, or other mechanical process as herein provided it shall be made in duplicate, and the custodian thereof shall place one copy in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing, for persons entitled thereto, [to] copies of the record.

History.

1957, ch. 206, § 4, p. 433.

STATUTORY NOTES

Compiler's Notes.

Brackets have been inserted around the word "to" near the end of the section to indicate that it is surplusage.

§ 9-335. Exemptions from disclosure — Confidentiality. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-124.

History.

I.C., § 9-335, as added by 1986, ch. 210, § 1, p. 543; am. 1994, ch. 181, § 40, p. 575; am. 2000, ch. 469, § 18, p. 1450; am. 2005, ch. 333, § 1, p. 1043; am. 2008, ch. 27, § 2, p. 40.

§ 9-336. Evidence from preliminary hearing — Admission — Requirements. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-125.

History.

I.C., § 9-336, as added by 1989, ch. 51, § 2, p. 63.

§ 9-337. Definitions. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-101.

History.

I.C., § 9-337, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 1, p. 1146; am. 2000, ch. 368, § 1, p. 1219; am. 2006, ch. 352, § 1, p. 1071; am. 2011, ch. 242, § 1, p. 651.

§ 9-338. Public records — Right to examine. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-102.

History.

I.C., § 9-338, as added by 1990, ch. 213, § 1, p. 480; am. 1997, ch. 80, § 1, p. 165; am. 1997, ch. 152, § 1, p. 432; am. 2000, ch. 342, § 2, p. 1146; am. 2006, ch. 103, § 1, p. 284; am. 2011, ch. 242, § 2, p. 651.

§ 9-339. Response to request for examination of public records. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-103.

History.

I.C., § 9-339, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 3, p. 1146; am. 2006, ch. 103, § 2, p. 284.

§ 9-340. Records exempt from disclosure. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section which comprised I.C., § 9-340, as added by 1997, ch. 60, § 2, p. 111; am. 1998, ch. 164, § 1, p. 552; am. 1998, ch. 262, § 1, p. 865; am. 1998, ch. 293, § 1, p. 968; am. 1998, ch. 308, § 1, p. 1012; am. 1998, ch. 411, § 4, p. 1275, was repealed by S.L. 1999, ch. 30, § 1, p. 41, effective July 1, 1999.

§ 9-340A. Records exempt from disclosure — Exemptions in federal or state law — Court files of judicial proceedings. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-104.

History.

I.C., § 9-340A, as added by 1999, ch. 30, § 2, p. 41.

§ 9-340B. Records exempt from disclosure — Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-105.

History.

I.C., § 9-340B, as added by 1999, ch. 30, § 3, p. 41; am. 1999, ch. 249, § 3, p. 638; am. 1999, ch. 308, § 1, p. 765; am. 2000, ch. 57, § 1, p. 120; am. 2000, ch. 342, § 4, p. 1146; am. 2000, ch. 367, § 1, p. 1216; am. 2000, ch. 469, § 19, p. 1450; am. 2001, ch. 48, § 1, p. 88; am. 2001, ch. 180, § 1, p. 606; am. 2001, ch. 296, § 1, p. 1044; am. 2002, ch. 62, § 1, p. 132; am. 2002, ch. 136, § 1, p. 371; am. 2003, ch. 164, § 1, p. 462; am. 2004, ch. 378, § 1, p. 1135; am. 2006, ch. 282, § 1, p. 866; am. 2006, ch. 352, § 2, p. 1071; am. 2009, ch. 202, § 2, p. 650; am. 2011, ch. 311, § 24, p. 882; am. 2012, ch. 300, § 1, p. 821; am. 2013, ch. 242, § 3, p. 570; am. 2015, ch. 303, § 8, p. 1188.

§ 9-340C. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-106.

History.

I.C., § 9-340C, as added by 1999, ch. 30, § 4, p. 41; am. 1999, ch. 347, § 2, p. 926; am. 1999, ch. 395, § 3, p. 1095; am. 2000, ch. 58, § 1, p. 122; am. 2000, ch. 189, § 3, p. 465; am. 2000, ch. 194, § 2, p. 479; am. 2000, ch. 293, § 1, p. 1011; am. 2000, ch. 332, § 6, p. 1112; am. 2000, ch. 342, § 5, p. 1146; am. 2000, ch. 469, § 20, p. 1450; am. 2002, ch. 329, § 3, p. 928; am. 2002, ch. 363, § 2, p. 1023; am. 2003, ch. 16, § 1, p. 48; am. 2003, ch. 26, § 2, p. 95; am. 2003, ch. 189, § 3, p. 511; am. 2004, ch. 163, § 1, p. 529; am. 2006, ch. 38, § 3, p. 105; am. 2006, ch. 67, § 1, p. 199; am. 2006, ch. 175, § 1, p. 535; am. 2006, ch. 352, § 3, p. 1071; am. 2007, ch. 360, § 11, p. 1061; am. 2008, ch. 99, § 5, p. 278; am. 2008, ch. 232, § 2, p. 706; am. 2010, ch. 104, § 2, p. 201; am. 2010, ch. 225, § 1, p. 501; am. 2010, ch. 235, § 3, p. 542; am. 2010, ch. 245, § 1, p. 629; am. 2011, ch. 151, § 7, p. 414; am. 2011, ch. 283, § 1, p. 766; a.m. 2012, ch. 103, § 2, p. 275; am. 2012, ch. 309, § 1, p. 851.

§ 9-340D. Records exempt from disclosure — Trade secrets, production records, appraisals, bids, proprietary information. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-107.

History.

I.C., § 9-340D, as added by 1999, ch. 30, § 5, p. 41; am. 2000, ch. 342, § 6, p. 1146; am. 2001, ch. 383, § 2, p. 1340; am. 2004, ch. 204, § 2, p. 621; am. 2004, ch. 205, § 2, p. 627; am. and redesig. 2005, ch. 25, § 12, p. 82; am. 2005, ch. 58, § 1, p. 213; am. 2005, ch. 276, § 1, p. 848; am. 2006, ch. 16, § 1, p. 42; am. 2007, ch. 60, § 15, p. 143; am. 2007, ch. 88, § 1, p. 240; am. 2007, ch. 205, § 1, p. 628; am. 2007, ch. 206, § 1, p. 632; am. 2008, ch. 27, § 3, p. 41; am. 2008, ch. 71, § 2, p. 187; am. 2010, ch. 222, § 1, p. 495; am. 2011, ch. 245, § 1, p. 657.

§ 9-340E. Exemptions from disclosure — Archaeological, endangered species, libraries, licensing exams. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-108.

History.

I.C., § 9-340E, as added by 1999, ch. 30, § 6, p. 41.

§ 9-340F. Records exempt from disclosure — Draft legislation and supporting materials, tax commission, unclaimed property, petroleum clean water trust fund. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-109.

History.

I.C., § 9-340F, as added by 1999, ch. 30, § 7, p. 41; am. 2000, ch. 229, § 1, p. 643; am. 2001, ch. 103, § 1, p. 253; am. 2003, ch. 96, § 1, p. 281; am. 2012, ch. 309, § 2, p. 851.

§ 9-340G. Exemption from disclosure — Records of court proceedings regarding judicial authorization of abortion procedures for minors. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-110.

History.

I.C., § 9-340G, as added by 2000, ch. 7, § 9, p. 10; am. 2007, ch. 193, § 2, p. 565.

§ 9-340H. Exemption from disclosure — Records related to the uniform securities act. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-111.

History.

I.C., § 9-340H, as added by 2004, ch. 45, § 3, p. 169.

STATUTORY NOTES

Prior Laws.

Former § 9-340H, which comprised I.C., § [9-340H] 9-340G, as added by 2000, ch. 194, § 3, p. 483, was repealed by S.L. 2002, ch. 27, § 1.

§ 9-341. Exempt and nonexempt public records to be separated. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-112.

History.

I.C., § 9-341, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 7, p. 1146.

§ 9-342. Access to records about a person by a person. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-113.

History.

I.C., § 9-342, as added by 1990, ch. 213, § 1, p. 480; am. 1992, ch. 200, § 2, p. 618; am. 2000, ch. 342, § 8, p. 1146; am. 2000, ch. 368, § 2, p. 1219; am. 2001, ch. 48, § 2, p. 88.

§ 9-342A. Access to records about a person by a person. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-114.

History.

I.C., § 9-342A, as added by 1998, ch. 125, § 1, p. 461; am. 2001, ch. 103, § 2, p. 253.

§ 9-343. Proceedings to enforce right to examine or to receive a copy of records — Retention of disputed records. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-115.

History.

I.C., § 9-343, as added by 1990, ch. 213, § 1, p. 480; am. 1992, ch. 200, § 3, p. 618; am. 2000, ch. 342, § 9, p. 1146; am. 2001, ch. 101, § 1, p. 251; am. 2011, ch. 245, § 2, p. 657.

§ 9-344. Order of the court — Court costs and attorney fees. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-116.

History.

I.C., § 9-344, as added by 1990, ch. 213, § 1, p. 480.

§ 9-345. Additional penalty. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-117.

History.

I.C., § 9-345, as added by 1990, ch. 213, § 1, p. 480.

§ 9-346. Immunity. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-118.

History.

I.C., § 9-346, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 10, p. 1146.

§ 9-347. Agency guidelines. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-119.

History.

I.C., § 9-347, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 11, p. 1146.

§ 9-348. Prohibition on distribution or sale of mailing or telephone number lists — Penalty. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-120.

History.

I.C., § 9-348, as added by 1992, ch. 279, § 1, p. 856; am. 1993, ch. 117, § 1, p. 294; am. 1994, ch. 398, § 1, p. 1261; am. 1997, ch. 152, § 2, p. 432; am. 2000, ch. 342, § 12, p. 1146; am. 2003, ch. 310, § 1, p. 851; am. 2011, ch. 283, § 2, p. 766.

STATUTORY NOTES

Compiler's Notes.

Former § 9-348, as enacted by S.L. 1990, ch. 213, § 1, was amended and redesignated as § 9-349 by § 2 of S.L. 1992, ch. 279 and was redesignated as § 9-350 by S.L. 1996, ch. 122, § 2. However, since another § 9-350 already existed, the section was redesignated as [9-349A] by the compiler. That redesignation was made permanent by S.L. 2005, ch. 25, § 13. The section was then amended and redesignated as § 9-351 by S.L. 2011, ch. 302, § 3, effective July 1, 2011.

§ 9-349. Replevin — Public records — Improper or unlawful transfer or removal. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-121.

History.

I.C., § 9-349, as added by 2011, ch. 302, § 1, p. 866.

STATUTORY NOTES

Compiler's Notes.

Former § 9-349 was redesignated as § 9-350 by S.L. 2011, ch. 302, § 2, effective July 1, 2011.

§ 9-349A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 9-349A was redesignated as § 9-351 by S.L. 2011, ch. 302, § 3, effective July 1, 2011, and subsequently repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015.

§ 9-350. Confidentiality language required in this chapter. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-122.

History.

I.C., § 9-349, as added by 1996, ch. 122, § 1, p. 437; am. and redesig. 2011, ch. 302, § 2, p. 866.

STATUTORY NOTES

Compiler's Notes.

Former § 9-350 was redesignated as § 9-352 by S.L. 2011, ch. 302, § 4, effective July 1, 2011.

§ 9-351. Severability. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-126.

History.

I.C., § 9-348, as added by 1990, ch. 213, § 1, p. 480; am. and redesig. 1992, ch. 279, § 2, p. 856; am. and redesig. 1996, ch. 122, § 2, p. 437; am. and redesig. 2005, ch. 25, § 13, p. 82; am. and redesig. 2011, ch. 302, § 3, p. 866.

§ 9-352. Idaho Code is property of the state of Idaho. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 1, effective July 1, 2015. See now § 74-123.

History.

I.C., § 9-350, as added by 1993, ch. 389, § 1, p. 1444; am. and redesig. 2011, ch. 302, § 4, p. 866.

Idaho Code Ch. 4

Chapter 4
PRIVATE WRITINGS

Sec.

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9-420. Proof of hospital medical charts or records by certified copy and compliance with subpoena duces tecum for production thereof.

9-421. Taken or converted merchandise — Evidence.

§ 9-401. Public and private seals. — A public seal in this state is a stamp or impression, made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign made in another state or territory or foreign country, and there recognized as a seal, must be so regarded in this state.

History.

C.C.P. 1881, § 922; R.S., R.C., & C.L., § 5989; C.S., § 7960; I.C.A., § 16-401.

STATUTORY NOTES

Cross References.

Abstract of title as evidence, § 54-102.

Bank stock books, § 26-404.

Great seal of the state, § 59-1005.

CASE NOTES

Effect on Omission of Seal.

It is held by many courts that the omission of a required seal is not fatal and is a mere irregularity which may be supplied by amendment and does not render the process or other paper from which it is omitted void, and this is the rule recognized in Idaho. Harpold v. Doyle, 16 Idaho 671, 102 P. 158 (1908).

Cited Henderson v. Allis-Chalmers Mfg. Co., 65 Idaho 570, 149 P.2d 133 (1943).

RESEARCH REFERENCES

Am. Jur. 2d. — 68 Am. Jur. 2d, Seals, § 1 et seq.

C.J.S. — 78A C.J.S., Seals, § 1 et seq.

ALR. — Preliminary proof, verification, or authentication of x-rays requisite to their introduction in evidence in civil cases. 5 A.L.R.3d 303.

Proof of authorship or identity of sender of telegram as prerequisite of its admission in evidence. 5 A.L.R.3d 1018.

Admissibility on issue of sanity of expert opinion based partly on medical, psychological or hospital reports. 55 A.L.R.3d 551.

Admissibility of newspaper article as evidence of the truth of the facts stated therein. 55 A.L.R.3d 663.

Letters to or from customers or suppliers as business records under statutes authorizing reception of business records in evidence. 68 A.L.R.3d 1069.

Admissibility under business injury statutes of hospital records in criminal cases. 69 A.L.R.3d 22.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting physician to treating physician. 69 A.L.R.3d 104.

Construction and effect of § 1-202 of the Uniform Commercial Code dealing with documents which are prima facie evidence of their own authenticity and genuineness. 72 A.L.R.3d 1243.

Requirement of notice as condition for admission in evidence of summary of voluminous records. 80 A.L.R.3d 405.

Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 A.L.R.3d 456.

Admissibility of computerized private business records. 7 A.L.R.4th 8.

Proof of foreign official record under rule 44(a)(2) of federal rules of civil procedure. 41 A.L.R. Fed. 784.

§ 9-402. Historical works — Books of science or art — Published maps or charts — Effect as evidence. — Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest.

History.

C.C.P. 1881, § 923; R.S., R.C., & C.L., § 5990; C.S., § 7961; I.C.A., § 16-402.

CASE NOTES

Drug charts.

Drug instruction sheet.

Scientific journals.

Treatises.

Drug Charts.

The state laid a sufficient foundation of reliability of the federal drug enforcement agency charts to permit the admission of the expert's opinion based upon them. State v. Crabb, 107 Idaho 298, 688 P.2d 1203 (Ct. App. 1984).

Drug Instruction Sheet.

In suit against doctors on charge of negligence in performing operation, it was error for the trial court to exclude from evidence an exhibit showing instruction sheet enclosed in each package of the drug used during the operation. Julien v. Barker, 75 Idaho 413, 272 P.2d 718 (1954).

Scientific Journals.

The admission of an enlargement of a journal article dealing with the dangers of handling liquid ammonia in an agricultural context and the need for better educational programs was not error, where the article was relevant to show that the president of defendant corporation was on notice of the

contents of that article, where proper foundation was laid in showing that the author was an authority in the field and that the president was a member of a society, all of whose members received the journal article, and where the article represented authoritative research on ammonia handling safety measures. Tucker v. Union Oil Co., 100 Idaho 590, 603 P.2d 156 (1979).

It is unreasonable to require a scientific work to concern facts known by or of interest to the general public before it is admissible; rather it need be known or of interest only to the particular field of endeavor in which it is used. State v. Crabb, 107 Idaho 298, 688 P.2d 1203 (Ct. App. 1984).

Admission of article in a scientific magazine on the subject of eyewitness testimony was not barred in a prosecution for robbery by this state's version of the hearsay rule, despite a lack of live testimony by the author. State v. Alger, 115 Idaho 42, 764 P.2d 119 (Ct. App. 1988).

Treatises.

In an action by a construction company against a county to recover on a sanitary land fill contract, the trial court erroneously excluded from evidence a solid waste disposal report prepared by a metropolitan area planning agency and a report prepared by the United States environmental protection agency, since the treatises were admissible under an exception to the hearsay rule for use in examination of plaintiff's experts as a foundation for their expert opinion testimony. McKay Constr. Co. v. Ada County Bd. of County Comm'rs, 96 Idaho 881, 538 P.2d 1185 (1975).

Cited In re Sutton, 83 Idaho 265, 361 P.2d 793 (1961); Hoffer v. Shappard, 160 Idaho 868, 380 P.3d 681 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1342 et seq.

§ 9-403. Notice to produce writing — Proof upon failure to produce — When notice not necessary. — If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

History.

C.C.P. 1881, § 924; R.S., R.C., & C.L., § 5991; C.S., § 7962; I.C.A., § 16-403.

CASE NOTES

Carbon copy as original.

Contents of check.

Carbon Copy as Original.

Carbon copy of letter is admissible without notice to produce where opposing party denies having received it. American Sur. Co. v. Blake, 54 Idaho 1, 27 P.2d 972 (1933).

Contents of Check.

Admission of parol proof of contents of check was erroneous where it had gone out of plaintiff's hands when he cashed it, defendant being entitled to reasonable notice to produce it. Leonard, Crossett & Riley, Inc. v. Whaley, 44 F.2d 692 (9th Cir. 1930).

Cited Idaho Galena Mining Co. v. Judge of Dist. Court, 47 Idaho 195, 273 P. 952 (1929).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1157 et seq.

§ 9-404. Writing need not be introduced. — Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

History.

C.C.P. 1881, § 925; R.S., R.C., & C.L., § 5992; C.S., § 7963; I.C.A., § 16-404.

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1157 et seq.

§ 9-405. Proof of writings. — Any writing may be proved either:

1. By any one who saw the writing executed; or 2. By evidence of the genuineness of the handwriting of the maker; or 3. By a subscribing witness.

History.

C.C.P. 1881, § 926; R.S., R.C., & C.L., § 5993; C.S., § 7964; I.C.A., § 16-405.

STATUTORY NOTES

Cross References.

Admission of execution, § 9-407.

Exemplars, § 9-412.

Probate of wills, § 15-3-101 et seq.

Proof of instrument by handwriting, §§ 55-721, 55-722.

CASE NOTES

Identification of statement.

Letters.

Proof of genuineness.

Identification of Statement.

The federal rules of civil procedure do not permit petitioner to seek the production of memoranda and statements gathered by counsel of adverse party in the course of his activities as counsel. Hickman v. Taylor, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947) (See Idaho R. Civ. P. 26(b)(3)).

Where one witness to statement signed by "x" was not produced and another witness thereto testified she was not sure plaintiff had placed "x" thereon, the court properly excluded the statement on the ground that it had

not been properly identified. Doxstater v. Northwest Cities Gas Co., 65 Idaho 814, 154 P.2d 498 (1944).

Letters.

The mere receipt of letters, though on official stationery, is not evidence that they were written by the person whose name they bear. Beloit v. Green, 43 Idaho 265, 251 P. 621 (1926).

Where there is no direct knowledge of handwriting, there must be something which assures the recipient of letters in a responsible way of their genuineness before he can swear to their writer. Beloit v. Green, 43 Idaho 265, 251 P. 621 (1926).

The mere fact that a letter purports to be written by the person in question is not sufficient to establish its authenticity. State v. Golden, 67 Idaho 497, 186 P.2d 485 (1947).

Letters which are not shown by any evidence to have been in fact signed by their alleged authors, or identified as genuine, are not admissible for any purpose. State v. Golden, 67 Idaho 497, 186 P.2d 485 (1947).

Where defendant sought to negative certain evidence by introducing a letter in evidence which he had written to a bank and which had been obtained from bank by sheriff, such letter was properly excluded where no representative of the bank was called to identify the letter, its contents, or the writer. State v. Golden, 67 Idaho 497, 186 P.2d 485 (1947).

Proof of Genuineness.

For writings, which are not self-authenticating, it is necessary to provide other proof of its genuineness than the mere writing itself before the writing is admissible, and the purported signature or recital of authorship on the face of a writing will not be accepted as sufficient preliminary proof of authenticity for the admission of a writing in evidence. Idaho First Nat'l Bank v. Wells, 100 Idaho 256, 596 P.2d 429 (1979).

Cited State v. Hebner, 108 Idaho 196, 697 P.2d 1210 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1045 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1222 et seq.

§ 9-406. Denial by subscribing witness — Proof by other evidence. — If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

History.

C.C.P. 1881, § 927; R.S., R.C., & C.L., § 5994; C.S., § 7965; I.C.A., § 16-406.

RESEARCH REFERENCES

C.J.S. — 32 C.J.S., Evidence, §§ 1095 to 1097.

CASE NOTES

Identification of Statement.

Where one witness to statement signed by "x" was not produced and another witness thereto testified she was not sure plaintiff had placed "x" thereon, the court properly excluded the statement on the ground that it had not been properly identified. Doxstater v. Northwest Cities Gas Co., 65 Idaho 814, 154 P.2d 498 (1944).

§ 9-407. Evidence of admission of execution. — Where, however, evidence is given that the party against whom the writing is offered, has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

History.

C.C.P. 1881, § 928; R.S., R.C., & C.L., § 5995; C.S., § 7966; I.C.A., § 16-407.

STATUTORY NOTES

Cross References.

Denial by subscribing witness, proof, § 9-406.

Private writings, acknowledgment, proof, § 9-409.

Proof of instrument by handwriting, §§ 55-721, 55-722.

Proof of writings in general, § 9-405.

§ 9-408. Entries made by decedent — When admissible. — The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as prima facie evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it.

2. When it was made in the professional capacity, and in the ordinary course of professional conduct.

3. When it was made in the performance of a duty specially enjoined by law.

History.

C.C.P. 1881, § 929; R.S., R.C., & C.L., § 5996; C.S., § 7967; I.C.A., § 16-408.

CASE NOTES

Account book entries.

Declarations against interest.

Entries made in professional capacity.

Account Book Entries.

Entries in account book kept by decedent are not admissible in evidence where it is not shown that entries were against the interest of person making them, or that they were made in a professional capacity and in the ordinary course of professional conduct, or that they were made in performance of a duty specially enjoined by law. Kent v. Richardson, 8 Idaho 750, 71 P. 117 (1902).

Declarations Against Interest.

Declarations of decedent in the form of writings are admissible if made against interest. Foster v. Diehl Lumber Co., 77 Idaho 26, 287 P.2d 282 (1955).

Entries Made in Professional Capacity.

In an action to enjoin defendant from obstructing an alleged county road which crossed defendant's land, a survey made by a county surveyor, since deceased, was admissible in evidence under this section. Bonner County v. Dyer, 92 Idaho 699, 448 P.2d 986 (1968).

Cited Hook v. Horner, 95 Idaho 657, 517 P.2d 554 (1973).

§ 9-409. Acknowledgment of private writings. — Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

History.

C.C.P. 1881, § 930; R.S., R.C., & C.L., § 5997; C.S., § 7968; I.C.A., § 16-409.

STATUTORY NOTES

Cross References.

Acknowledgments of conveyances, § 55-701 et seq.

Proof of conveyance of real property, § 9-410.

RESEARCH REFERENCES

C.J.S. — 32A C.J.S., Evidence, § 1144 et seq.

§ 9-410. Instruments affecting realty — Certified copies of record — Admissibility. — Every instrument conveying or affecting real property, acknowledged or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

History.

C.C.P. 1881, § 931; R.S., R.C., & C.L., § 5998; C.S., § 7969; I.C.A., § 16-410.

STATUTORY NOTES

Cross References.

Abstracts of title as evidence, § 54-102.

Public record of private writing, how proved, § 9-321.

Transfers of real property to be in writing, exception, §§ 9-503, 9-504.

CASE NOTES

Construction of Statute.

Provisions of this section are mandatory and it is erroneous to admit copy of deed in evidence without compliance with its requirements. Oatman v. Hampton, 43 Idaho 675, 256 P. 529 (1927).

RESEARCH REFERENCES

C.J.S. — 32A C.J.S., Evidence, § 1144 et seq.

§ 9-411. Secondary evidence of writings — When admissible. — There can be no evidence of the contents of a writing other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

3. When the original is a record or other document in the custody of a public officer.

4. When the original has been recorded, and a certified copy of the record is made evidence by this code or other statutes.

5. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

6. When the original consists of medical charts or records of hospitals licensed in this state, and the provisions of section 9-420, Idaho Code, have been followed.

In the cases mentioned in subdivisions 3, 4 and 6, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions 1 and 2, either a copy or oral evidence of the contents.

History.

C.C.P. 1881, § 932; R.S., R.C., & C.L., § 5999; C.S., § 7970; I.C.A., § 16-411; am. 1971, ch. 47, § 1, p. 100.

STATUTORY NOTES

Cross References.

Abstracts of title, § 54-102.

Compiler's Notes.

The reference to "this Code" in this section is to the Code of Civil Procedure, a division of the Idaho Code, consisting of titles 1 through 13.

CASE NOTES

Application of subdivision 5.

Carbon copy of letter.

Carbon copy of will.

Conclusions from books and records.

Copy.

Failure to demand.

In general.

Objection to admission.

Parol evidence rule.

Photographic copies.

Proof of inability to produce.

Receipt as prima facie.

Statements in deposition.

Tape recording.

Application of Subdivision 5.

Rule stated in subdivision 5 can not be extended to cover case where some of the books and records could not be identified properly and others had been permitted to be lost or destroyed by representatives of the creditors in whose behalf the action was being prosecuted. Stolz v. Scott, 28 Idaho 417, 154 P. 982 (1916).

Carbon Copy of Letter.

Carbon copy of letter is admissible without notice to produce where opposing party denies having received it. American Sur. Co. v. Blake, 54 Idaho 1, 27 P.2d 972 (1933).

Carbon Copy of Will.

That the proof by a witness that a copy of a will is a carbon or duplicate copy of a lost will is the best evidence of the contents of the will does not make such copy the "best evidence" or even admissible on examination of any other witness as to the provisions of the will, unless the witness personally knows it is a carbon or duplicate copy of the alleged lost will. Hull v. Cartin, 61 Idaho 578, 105 P.2d 196 (1940).

Conclusions from Books and Records.

Where books of account and records of a corporation have been investigated by an expert accountant who has reached a conclusion therefrom as to the solvency of the corporation, and as to whether a dividend had been declared and paid from its capital stock or from surplus profits, and where some of the books had been subsequently lost or destroyed and others could not be properly identified as records of the corporation, it was not error for the trial court to reject as evidence the report of the accountant and oral testimony supplementing the same as to his conclusions. Stolz v. Scott, 28 Idaho 417, 154 P. 982 (1916).

Plaintiff in damage suit was entitled to testify as to net loss sustained in gasoline sales based on record of gas company though records were not produced in court. Driesbach v. Lynch, 74 Idaho 225, 259 P.2d 1039 (1953).

Copy.

None of the exceptions contained in this section applied to copy of agreement in which party purportedly brought disputed mining claims; therefore, court did not err in excluding such copy. Golden Condor, Inc. v. Bell, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

Failure to Demand.

Failure to demand production of original is no ground for rejecting copy where addressee admits receiving original letter. Fairbanks v. Fairbanks, 59 Idaho 1, 80 P.2d 17 (1938).

In General.

The "best evidence" rule, codified as this section and essentially reproduced at Idaho Evid. R. 1002, states a preference in favor of original written instruments — as opposed to copies, testimony, or other secondary sources of information — to prove the terms of a writing; the rule is not

applicable if the writing is collateral to testimony about an extrinsic event. State v. Rosencrantz, 110 Idaho 124, 714 P.2d 93 (Ct. App. 1986).

Objection to Admission.

Evidence clearly not admissible was properly admitted where there was no specific objection and the only objection was that it was irrelevant, immaterial and incompetent. Smith v. Smith, 95 Idaho 477, 511 P.2d 294 (1973).

Parol Evidence Rule.

General rule that written contract can not be contradicted or varied by evidence of oral agreement between parties is especially applicable to cases where bona fide holders of negotiable securities are sought to be deprived of rights to which they were entitled according to legal import of terms of such instruments. Burke v. Dulaney, 153 U.S. 228, 14 S. Ct. 816, 38 L. Ed. 698 (1894).

Rule that excludes parol evidence to contradict written instrument has no application where writing was never delivered as present contract. Burke v. Dulaney, 153 U.S. 228, 14 S. Ct. 816, 38 L. Ed. 698 (1894).

Admission of parol proof of contents of check was erroneous where it had gone out of plaintiff's hands when he cashed it, defendant being entitled to reasonable notice to produce it. Leonard, Crossett & Riley, Inc. v. Whaley, 44 F.2d 692 (9th Cir. 1930).

Where an agreement for sale of property and an addendum were facially ambiguous as to the deadline for buyers to secure financing and complete the sale, district court erred in granting summary judgment to sellers who had repudiated agreement. Parol evidence could be used to resolve this facial ambiguity and determine the intent of the parties. Cannon v. Perry, 144 Idaho 728, 170 P.3d 393 (2007).

Photographic Copies.

Photographic copies, which were produced not in the ordinary course of business but for trial, did not fall within § 9-417 but rather they were secondary evidence governed by this section. School Dist. No. 91, Bonneville County v. Taysom, 94 Idaho 599, 495 P.2d 5 (1972).

Where a review of the record indicated that the bank made an adequate showing of loss and inability to produce the originals such that secondary evidence of the promissory notes could be admitted in evidence, admission of the photo copies of the notes was not violative of the "best evidence rule." Idaho First Nat'l Bank v. Wells, 100 Idaho 256, 596 P.2d 429 (1979).

Where the trial court was satisfied with the foundation laid for the necessity and trustworthiness of a photocopy of a ledger-sheet and its admission in evidence, and given the wide discretion allowed to the trial court and the substantial although conflicting evidence upon which the exhibit was admitted, the trial court did not abuse its discretion in admitting the exhibit into evidence. Curiel v. Mingo, 100 Idaho 303, 597 P.2d 26 (1979).

Proof of Inability to Produce.

Secondary evidence of the contents of an insurance application should not have been received until proof had been made that the original writing itself could not be produced in a suit by appellant alleging he was a pretermitted son and sole heir of deceased, such insurance application allegedly acknowledging appellant as son of deceased. In re Stone's Estate, 78 Idaho 632, 308 P.2d 597 (1957).

Receipt as Prima Facie.

A simple receipt is only "prima facie evidence" of the truth of the statements recited therein, and parol evidence is admissible to explain or contradict it. Idaho Gold Dredging Corp. v. Boise Payette Lumber Co., 62 Idaho 683, 115 P.2d 401 (1941).

Statements in Deposition.

In an action to foreclose mortgage, that portion of defendant's deposition describing an alleged written agreement by which defendant was to be given a warranty deed to resort property did not fall within any of the exceptions provided for in this section and, thus, was properly excluded by the trial court. Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc., 97 Idaho 572, 548 P.2d 72 (1976).

Tape Recording.

The "best evidence" rule did not bar admission of the police officer's testimony of an interview with the defendant where a tape recording of the interview existed, and the officer used the tape recording only to refresh his memory. State v. Rosencrantz, 110 Idaho 124, 714 P.2d 93 (Ct. App. 1986).

Cited J. R. Watkins Co. v. Clark, 65 Idaho 504, 147 P.2d 348 (1944); State v. Davis, 72 Idaho 115, 238 P.2d 450 (1951); Jackson v. Blue Flame Gas Co., 90 Idaho 393, 412 P.2d 418 (1966); Huskinson v. Huskinson, 92 Idaho 920, 453 P.2d 569 (1969); Dawson v. Olson, 97 Idaho 274, 543 P.2d 499 (1975); Obray v. Mitchell, 98 Idaho 533, 567 P.2d 1284 (1977); St. Benedict's Hosp. v. County of Twin Falls, 107 Idaho 143, 686 P.2d 88 (Ct. App. 1984); State v. Barlow, 113 Idaho 573, 746 P.2d 1032 (Ct. App. 1987); Large v. Cafferty Realty, Inc., 123 Idaho 676, 851 P.2d 972 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1062 et seq.

§ 9-412. Exemplar. — Whenever the genuineness of a writing is at issue, any writing admitted or proved to be genuine is competent evidence as an exemplar for the purpose of comparison with the disputed writing: provided, that such writing so admitted or proved to be genuine shall in no way refer or relate to any matter then in issue.

History.

R.C., § 6000, as added by 1915, ch. 154, § 1, p. 335; reen. C.L., § 6000; C.S., § 7971; I.C.A., § 16-412.

CASE NOTES

Common law abrogated.

"Exemplar" defined.

Harmless error.

Rule in general.

Common Law Abrogated.

This section abrogates common-law rule and permits any writing either admitted or proved to be genuine to be admitted as an exemplar for the purpose of comparison with a disputed writing. State v. Allen, 53 Idaho 737, 27 P.2d 482 (1933).

"Exemplar" Defined.

Letters, checks, affidavits, notebooks, and other writings, positively sworn to be in testator's handwriting, were competent as ultimate evidence that will was in his handwriting, under this section; "exemplar," being a "specimen," which is capable of supporting both deduction and inference. In re Fisher's Estate, 47 Idaho 668, 279 P. 291 (1929).

Harmless Error.

Admission of certain exhibits into case and cross-examination of witness thereon without objection may be harmless error, especially where no

prejudice has resulted from course. Mitchell v. First Nat'l Bank, 40 Idaho 463, 234 P. 154 (1925).

Rule in General.

Before specimen of handwriting is admissible as standard of comparison, its genuineness must be established or shown by clear and undoubted testimony. State v. Brassfield, 33 Idaho 660, 197 P. 559 (1921).

In actions involving genuineness of signature, only such papers as are admitted in evidence in case for other purposes and such as are admitted to be genuine should, except in very exceptionable cases, be admitted for purpose of comparison. Mitchell v. First Nat'l Bank, 40 Idaho 463, 234 P. 154 (1925).

Mark in lieu of signature was, under the circumstances, properly the subject of expert testimony. Greenstreet v. Greenstreet, 65 Idaho 36, 139 P.2d 239 (1943).

Relief warrant issued to deceased which was indorsed and cashed could not be used as an exemplar to prove handwriting on written instrument not witnessed or acknowledged as that of deceased where auditor testified that he could not say positively that handwriting on warrant was handwriting of deceased. Fredricksen v. Fullmer, 74 Idaho 164, 258 P.2d 1155 (1953).

§ 9-413. Business Records as Evidence Act — Term defined. — The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

History.

1939, ch. 106, § 1, p. 175.

STATUTORY NOTES

Cross References.

Binding effect of bank statement, § 28-4-406.

CASE NOTES

Chattel mortgages.

Payroll records.

Purpose of statute.

What constitutes "business."

Chattel Mortgages.

In action to recover penalties and damages for failure to satisfy chattel mortgages and conditional sales contracts, exhibits were held to be admissible in view of this act. Henderson v. Allis-Chalmers Mfg. Co., 65 Idaho 570, 149 P.2d 133 (1943).

Payroll Records.

In proceeding by employer to determine 1949 experience rate, it was error to strike payroll records of employer from the evidence, where agency had destroyed its records covering years of 1939 to 1948. In re Potlatch Forests, 72 Idaho 291, 240 P.2d 242 (1952).

Purpose of Statute.

In enacting this act, the legislature apparently intended to broaden the scope of admissibility of records made in the regular course of business. Henderson v. Allis-Chalmers Mfg. Co., 65 Idaho 570, 149 P.2d 133 (1943).

What Constitutes "Business."

The term "business," as used in this act, is not limited to profit making or commercial enterprises, but also includes noncommercial entities such as an estate. Daniel v. Moss, 93 Idaho 612, 469 P.2d 50 (1970).

Cited Hammond v. Hammond, 92 Idaho 623, 448 P.2d 237 (1968).

§ 9-414. Business records — When competent evidence. — A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to the identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

History.

1939, ch. 106, § 2, p. 175.

CASE NOTES

Books of account.

Construction.

Discretion of court.

Farming services.

Financial statement.

Inadmissible.

Ledger sheet.

Prejudicial impact.

Price tag.

Proof.

Purpose of statute.

Reconstruction of bank statement.

Summaries of records.

Tax returns.

Testimony of store manager.

Books of Account.

Where defendant, who was sued for money had and received and money loaned, filed counterclaims for money still due under the contract, plaintiff's books of account, showing the amount of cash advanced to defendant, were properly admitted in evidence. Kelson v. Ahlborn, 87 Idaho 519, 393 P.2d 578 (1964).

Construction.

The legislative intent requires that the business record exception be broadly construed. Cheney v. Palos Verdes Inv. Corp., 104 Idaho 897, 665 P.2d 661 (1983).

Prior to adoption of the Idaho rules of evidence, admission of business records was governed by this section. This section and Idaho Evid. R. 803(6) have been interpreted broadly to liberally allow introduction of business records. Herrick v. Leuzinger, 127 Idaho 293, 900 P.2d 201 (Ct. App. 1995).

Discretion of Court.

The trial court has broad discretion as to the admission of evidence, including business records, and the exercise of that discretion will not be overturned absent the clear showing of abuse. Cheney v. Palos Verdes Inv. Corp., 104 Idaho 897, 665 P.2d 661 (1983).

Farming Services.

Exhibits consisting of papers listing the charge per acre for various farming services signed by one of the defendants and a record of the charges to that defendant as performed were business records and as such admissible. Simplot Soilbuilders, Inc. v. Leavitt, 96 Idaho 17, 523 P.2d 1363 (1974).

Financial Statement.

A financial statement of a corporation prepared by a certified public accountant, who testified that such statement had been prepared by him with the assistance of the bookkeeper of the company in the ordinary course of business and for the company and from the books and records of the company was admissible in evidence. Hammond v. Hammond, 92 Idaho 623, 448 P.2d 237 (1968).

Inadmissible.

In action to recover balance of contract price set forth in construction contract exhibit that consisted of a photostatic copy of a list of principal contract bidders for a project, where such exhibit was covered with phone numbers, notes and mathematical computations made by plaintiff and such computations were not labeled in any way, where the figures thereon were not in and of themselves intrinsically understandable, and where such exhibit was not produced by plaintiff in response to interrogatories but was offered in the rebuttal portion of the trial to prove that the work in question was not intended to be included in the contract, such exhibit was not relevant to the issues presented at the trial and was inadmissible since there was no showing on the exhibit as to how plaintiff calculated his bid, since plaintiff's testimony and explanation action of the exhibit only explained how it provided the basis for his bids to other contractors and since printed legend on copy was in conflict with typed and written information in the body of the document; consequently, there was no way to indicate the intent of the parties or determine whether a mutual mistake was made by the parties. Ed Sparks & Sons v. Joe Campbell Constr. Co., 99 Idaho 139, 578 P.2d 681 (1978).

Ledger Sheet.

Where the trial court was satisfied with the foundation laid for the necessity and trustworthiness of a photocopy of a ledger sheet and its admission in evidence, and given the wide discretion allowed to the trial court and the substantial although conflicting, evidence upon which the exhibit was admitted, the trial court did not abuse its discretion in admitting the exhibit into evidence. Curiel v. Mingo, 100 Idaho 303, 597 P.2d 26 (1979).

Prejudicial Impact.

In an action to recover damages to plaintiff's crops due to negligence by defendants in applying herbicide to the neighboring crops, where defendants' exhibit purported to recite the temperature, quitting time and other data concerning application of the herbicide and it was represented as an authentic business record and not as a document prepared in anticipation of trial, the probability that the exhibit could have tainted the verdict of jury was apparent and, thus, the mere existence of fraud, taken together with the probability of influence resulting therefrom, was sufficient to require

vacation of judgment and a new trial. Heston v. Payne, 97 Idaho 193, 541 P.2d 617 (1975).

Price Tag.

Where stolen recorder, together with its price tag, was admitted on the basis of the testimony of a management employee, who testified to the authenticity of the tag and that from the price tag code he could approximate the market value of the article, the price tag met the test of relevance in that it, along with the verbal testimony, established the value of the stolen item, which was an essential element of the grand larceny charge. Since the expert testimony concerning the value of the recorder depended largely upon the content of the writing on the price tag, the price tag must be considered hearsay, but even accepting the hearsay character of the price tag admitted in evidence, it fell within the business records exception to the hearsay rule as stated in this section and its admission was not error. State v. McPhie, 104 Idaho 652, 662 P.2d 233 (1983).

Proof.

Where signature card and deposit slip along with ledger account at bank was introduced into evidence on issue of intent of defendant, court did not err in admission of exhibits though state did not establish that signature on card was the signature of the defendant. State v. Baldwin, 69 Idaho 459, 208 P.2d 161 (1949).

Purpose of Statute.

By the enactment of §§ 9-413 to 9-416, the legislature intended to broaden the scope of the admissibility of business records. John Scowcroft & Sons Co. v. Roselle, 77 Idaho 142, 289 P.2d 621 (1955); Kelson v. Ahlborn, 87 Idaho 519, 393 P.2d 578 (1964).

Reconstruction of Bank Statement.

Where the parties, in an action for issuing a check with insufficient funds, agreed that if the defendant's bank statement had not been lost it would have been admissible under the business records exception, a hearsay objection concerning a reconstruction of that lost statement was inapplicable; once the original evidence had withstood a hearsay objection, secondary evidence of that original was not subject to a hearsay analysis. State v. White, 102 Idaho 924, 644 P.2d 318 (1982).

Summaries of Records.

In action on contract for care and feeding of cattle, monthly summaries of amount of feed used were properly admitted as business records since they were made in the ordinary course of business and not in preparation for trial. Cheney v. Palos Verdes Inv. Corp., 104 Idaho 897, 665 P.2d 661 (1983).

Tax Returns.

In an action by administratrix for attorney fees due decedent in connection with work for defendant's estate to establish amount of fee that plaintiff's decedent meant to charge the estate, the federal estate tax return, filed for the estate, which stated that $900 was the attorney fee "agreed upon" for the legal work done by plaintiff's decedent in connection with the probate of the estate, and which was made in the regular course of business more than two years prior to the attorney's death, was admissible into evidence as a business record under this section. Daniel v. Moss, 93 Idaho 612, 469 P.2d 50 (1970).

Testimony of Store Manager.

Testimony of store manager was competent for the purpose of laying a foundation for admission of business records governing transaction sued upon. John Scowcroft & Sons Co. v. Roselle, 77 Idaho 142, 289 P.2d 621 (1955).

Cited State v. Rice, 99 Idaho 752, 588 P.2d 951 (1979); Christensen v. Rice, 114 Idaho 929, 763 P.2d 302 (Ct. App. 1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1254 et seq.

C.J.S. — 32A C.J.S., Evidence, § 1177 et seq.

§ 9-415. Business records — Uniformity of interpretation of act. — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

1939, ch. 106, § 3, p. 175.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1939, ch. 106 compiled as §§ 9-413 to 9-416.

CASE NOTES

Purpose of Statute.

By the enactment of §§ 9-413 to 9-416 the legislature intended to broaden the scope of the admissibility of business records. John Scowcroft & Sons Co. v. Roselle, 77 Idaho 142, 289 P.2d 621 (1955); Kelson v. Ahlborn, 87 Idaho 519, 393 P.2d 578 (1964).

§ 9-416. Business records — Short title of act. — This act may be cited as the Uniform Business Records as Evidence Act.

History.

1939, ch. 106, § 4, p. 175.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1939, ch. 106 compiled as §§ 9-413 to 9-416.

The Business Records as Evidence Act was withdrawn by the National Conference of Commissioners on Uniform State Laws in 1966.

CASE NOTES

Purpose of Statute.

By the enactment of §§ 9-413 to 9-416 the legislature intended to broaden the scope of the admissibility of business records. John Scowcroft & Sons Co. v. Roselle, 77 Idaho 142, 289 P.2d 621 (1955); Kelson v. Ahlborn, 87 Idaho 519, 393 P.2d 578 (1964).

§ 9-417. Admissibility of reproduced records in evidence. — If any business, institution, or member of a profession or calling, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, optical imaging, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity and the principal or true owner has not authorized destruction or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

History.

1951, ch. 173, § 1, p. 368; am. 1995, ch. 39, § 1, p. 58.

CASE NOTES

Photographic Copies.

Photographic copies which were produced not in the ordinary course of business, but for trial, did not fall within this section, but rather they were secondary evidence governed by § 9-411. School Dist. No. 91, Bonneville County v. Taysom, 94 Idaho 599, 495 P.2d 5 (1972).

Where the trial court was satisfied with the foundation laid for the necessity and trustworthiness of a photocopy of a ledger-sheet and its admission in evidence, and given the wide discretion allowed to the trial court and the substantial although conflicting evidence upon which the

exhibit was admitted, the trial court did not abuse its discretion in admitting the exhibit into evidence. Curiel v. Mingo, 100 Idaho 303, 597 P.2d 26 (1979).

The court did not err in refusing to admit a photocopy of a signed original contract under this section, where the copy was not prepared by the offering parties in the course of their business, and the origin of the copy could not be satisfactorily established. Baker v. Kulczyk, 112 Idaho 417, 732 P.2d 386 (Ct. App. 1987).

Cited Large v. Cafferty Realty, Inc., 123 Idaho 676, 851 P.2d 972 (1993).

§ 9-418. Interpretation. — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

1951, ch. 173, § 2, p. 368.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1951, ch. 173, which is compiled as §§ 9-417 to 9-419.

§ 9-419. Short title. — This law may be cited as the Uniform Photographic Copies of Business Records as Evidence Act.

History.

1951, ch. 173, § 3, p. 368.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1951, ch. 173, which is compiled as §§ 9-417 to 9-419.

Effective Dates.

Section 4 of S.L. 1935, ch. 173 provided said act should be in full force and effect from and after July 1, 1951.

Idaho Code § 9-420

§ 9-420. Proof of hospital medical charts or records by certified copy and compliance with subpoena duces tecum for production thereof. — 1. Medical charts or records of hospitals licensed in this state may be proved as to foundation, identity and authenticity by use of a legible and durable copy, certified upon verification by an employee of the hospital charged with the responsibility of being custodian of the originals thereof and empowered by said hospital to make such verified certifications. Said copy may be used in any proceeding in lieu of the original which, however, the hospital shall hold available during the pendency of the cause or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record. A hospital wishing to avail itself of this section shall at any time prior to the time for proof of said charts and records, place on file with the clerk of the court or with the other body or agency conducting the proceeding a certified copy of a resolution of the governing board of such hospital, authorizing and identifying such employee.

2. When a subpoena duces tecum is served upon any employee of such a hospital, and requires the production of any such medical charts or records at trial, deposition or any other proceeding, it is sufficient compliance therewith if a hospital employee charged with the responsibility of being custodian of the originals thereof promptly notifies the party causing service of the subpoena, or his attorney of record, together with all other parties to the proceeding in which the subpoena was issued and of which parties he has reasonable notice, or their attorneys of record, of the hospital's election to proceed under the provisions hereof and of the estimated actual and reasonable expenses of reproducing such charts or records. Following such notification, the hospital employee charged with custodian responsibility for the original charts or records specified in the subpoena shall hold the same available at the hospital, and upon payment to the hospital of said estimated reproduction expenses shall promptly deliver, by mail or otherwise, a true, legible and durable copy of all medical charts or records specified in such subpoena, certified upon his verification, to the clerk of the court before which said proceeding is pending, or to the officer, body or tribunal before which said proceeding is pending if it be not before a court of this state.

Such copies shall be delivered after being separately inclosed and sealed in an inner envelope or wrapper, with the title and number of the action, cause or proceeding, the name of such hospital, the name of the hospital employee making such certification and verification and the date of the subpoena clearly inscribed thereon, and the sealed envelope or wrapper shall then be inclosed and sealed in an outer envelope or wrapper, and delivered as aforesaid.

If the hospital has none of the charts or records specified in the subpoena, or only part thereof, an employee having custodial responsibility for original hospital charts or records shall so state in an affidavit and following notice and payment of expenses as hereinabove provided shall hold available such original charts or records as are in the hospital's custody and specified in the subpoena and shall deliver copies thereof certified upon his verification together with said affidavit, in the manner hereinabove provided.

3. The personal attendance of the hospital employee having custodial responsibility for the original charts or records specified in the subpoena is required if the subpoena contains a clause providing substantially as follows: "The personal attendance of a hospital employee having custodial responsibility for the original charts or records specified herein is required by this subpoena. The procedure outlined in section 9-420, Idaho Code, shall not be sufficient compliance herewith." If the subpoena duces tecum requires the attendance of a hospital employee in the above manner, said requirement shall be deemed satisfied by the personal attendance of any hospital employee whose name has been lodged with the court or other body as provided in subsection 1 of this section. If personal attendance of a witness is required in the manner herein provided, the hospital may nevertheless elect to substitute true, legible and durable copies of the charts or records specified in the subpoena duces tecum by the giving of a notice of such election in the manner hereinabove set forth, in which case payment to the hospital of the actual and reasonable expenses of duplication of such charts or records by any party to the proceeding in which the subpoena was issued, or such party's attorney of record, shall be a condition precedent to the personal attendance of any person pursuant to said subpoena, unless otherwise ordered by the court or other body before which said proceeding is pending.

4. Any patient whose medical records or charts are thus copied and delivered, any person acting on his behalf, the hospital having custody of such records, or any physician, nurse or other person responsible for entries on such charts or records shall have standing to apply to the court or other body before which the cause or proceeding is pending for a protective order denying, restricting or otherwise limiting access and use of such copies or original charts and records. Such patients, persons, hospitals, physicians or nurses who are not parties to the cause or proceeding and who wish to apply for a protective order may petition to intervene in the cause or proceeding and simultaneously apply for such a protective order.

History.

I.C., § 9-420, as added by 1971, ch. 47, § 2, p. 100.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 49.

C.J.S. — 32A C.J.S., Evidence, § 1194 et seq.

§ 9-421. Taken or converted merchandise — Evidence. — In any civil action for a violation of the shoplifting laws of Idaho, photographs of the goods or merchandise alleged to have been taken or converted shall be deemed competent evidence of such goods or merchandise and shall be admissible in any proceeding, hearing or trial to the same extent as if such goods and merchandise had been introduced as evidence. Such photographs shall bear a written description of the goods or merchandise alleged to have been taken or converted, the name of the owner of such goods or merchandise, or the store or establishment wherein the alleged violation occurred, the name of the accused, the name of a peace officer, the date of the photograph and the name of the photographer. Such writing shall be made under oath by a peace officer, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged violation occurred.

History.

I.C., § 9-421, as added by 1980, ch. 244, § 1, p. 564.

Idaho Code Ch. 5

Chapter 5
INDISPENSABLE EVIDENCE — STATUTE OF FRAUDS

Sec.

9-501. Perjury and treason.

9-502. Wills to be in writing.

9-503. Transfers of real property to be in writing.

9-504. Exceptions to preceding section.

9-505. Certain agreements to be in writing.

9-506. Original obligations — Writing not needed.

9-507. Representations of credit to be in writing.

9-508. Real estate commission contracts to be in writing.

§ 9-501. Perjury and treason. — Perjury and treason must be proved by testimony of more than one (1) witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two (2) witnesses, or one (1) witness and corroborating circumstances.

History.

C.C.P. 1881, § 933; R.S., R.C., & C.L., § 6005; C.S., § 7972; I.C.A., § 16-501.

STATUTORY NOTES

Cross References.

Corroboration required in divorce cases, § 32-703.

"Perjury" defined, § 18-5401.

"Treason" defined, Idaho Const., Art. V, § 5.

CASE NOTES

Cited Quayle v. Mackert, 92 Idaho 563, 447 P.2d 679 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Perjury, §§ 80, 82-84.

70 Am. Jur. 2d, Sedition, Subversive Activities and Treason, § 84.

C.J.S. — 70 C.J.S., Perjury, § 61 et seq.

87 C.J.S., Treason, §§ 14, 15.

ALR. — Applicability of statute of frauds to agreement to rescind contract for sale of land. 42 A.L.R.3d 242.

Validity of lease or sublease subscribed by one of the parties only. 46 A.L.R.3d 619.

Comment note. Statute of frauds and conflict of laws. 47 A.L.R.3d 137.

Action by employee and reliance on employment contract which violates statute of frauds as rendering contract enforceable. 54 A.L.R.3d 715.

Promissory estoppel as basis for avoidance of statute of frauds. 56 A.L.R.3d 1037.

Exceptions to rule that oral gifts of land are unenforceable under statute of frauds. 83 A.L.R.3d 1294.

§ 9-502. Wills to be in writing. — A last will and testament, except a nuncupative will, is invalid unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

History.

C.C.P. 1881, § 934; R.S., R.C., & C.L., § 6006; C.S., § 7973; I.C.A., § 16-502.

STATUTORY NOTES

Cross References.

Formal requisites of wills, § 15-2-501.

Probate of wills, § 15-3-101 et seq.

§ 9-503. Transfers of real property to be in writing. — No estate or interest in real property, other than for leases for a term not exceeding one (1) year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

History.

C.C.P. 1881, § 935; R.S., R.C., & C.L., § 6007; C.S., § 7974; I.C.A., § 16-503.

STATUTORY NOTES

Cross References.

Instruments affecting realty, certified copies of record admissible, § 9-410.

Public records of private writings, how proved, § 9-314.

CASE NOTES

Action on lease.

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Transfer by gift.

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Warranty deed delivered to escrow holder.

Water rights.

Action on Lease.

In action for unlawful detainer, evidence of taking possession by lessee and the payment of part of the consideration or performance of work as part of the consideration was not admissible as a defense. Fry v. Weyen, 58 Idaho 181, 70 P.2d 359 (1937).

Agency.

When agency is denied, it is necessary to show agency in writing, subscribed by owner of the land. Thompson v. Burns, 15 Idaho 572, 99 P. 111 (1908).

The name of the grantee cannot be inserted by an agent for the grantor (beneficial owner here) unless the agent's authority is in writing. If the authority of the agent is not in writing, his insertion of the grantee's name in

the deed does not pass title. Erb v. Kohnke, 121 Idaho 328, 824 P.2d 903 (Ct. App. 1992).

Applicability.

Grant of summary judgment in favor of the purchaser in a lawsuit to recover money deposits from the sellers after two codependent land sale contracts involving the parties failed to close was proper, in part because the district court's citation to this section was irrelevant. The statute of frauds does not come into play; the contracts are integrated, they had not been extended, modified, or renewed by any writing conforming with the amendments and waivers provision, and any argument to the contrary was without merit. Buku Props., LLC v. Clark, 153 Idaho 828, 291 P.3d 1027 (2012).

Auctions.

The statute of frauds applies to auctions of land in the same manner as any other land transaction. Wakelum v. Hagood, 151 Idaho 688, 263 P.3d 742 (2011).

While a sale of land is not taken outside the statute of frauds just because it involves an auction, the auction terms agreed upon by the seller, in a writing, can be considered in determining whether the writing satisfies the statute of frauds. Wakelum v. Hagood, 151 Idaho 688, 263 P.3d 742 (2011).

When landowner signed a representation agreement, authorizing an absolute auction of his properties on the terms therein stated, all terms essential to a land sale contract were contained within that agreement. While the representation agreement did not specifically state the purchase price for any parcel, or the name of the buyer or buyers who would submit the highest bid thereon, the agreement contained an appropriate provision for reducing those material terms to certainty. Wakelum v. Hagood, 151 Idaho 688, 263 P.3d 742 (2011).

Authorized in Writing.

Agreement by defendant's attorney and prospective purchasers for a sale on terms other than those stipulated in broker's contract of employment did not constitute a sale, authorizing a broker's commission, in the absence of written authority from the defendant to her attorney to enter into an

agreement for the sale of the real estate. Central Idaho Agency, Inc. v. Turner, 92 Idaho 306, 442 P.2d 442 (1968).

Construction and Application.

This section is statutory declaration of common-law rule based on statute of frauds. Quirk v. Bedal, 42 Idaho 567, 248 P. 447 (1926).

Where title to land is not involved, fact of possession or occupancy may be established like any other fact, and written instrument is not necessary. Albrethsen v. Clements, 48 Idaho 80, 279 P. 1097 (1929).

This statute prescribes a rule of evidence, and in the instances enumerated the evidence must be in writing; it was intended to prevent proof in cases where grantors in warranty deeds attempt to contradict the terms of the deed and establish a trust in favor of third parties and to prevent titles becoming subject to capricious memories of interested witnesses. Dunn v. Dunn, 59 Idaho 473, 83 P.2d 471 (1938).

Easement.

Trial court erred in granting a parking easement to purchaser of adjoining property, where easement was based on an oral agreement made when purchaser was only a tenant, since this section requires a writing for the creation of such an easement. Fajen v. Powlus, 96 Idaho 625, 533 P.2d 746 (1975).

Where landowner and owner of adjoining property entered into a written contract whereby adjoining owner agreed to deliver culinary and domestic well water, but where landowner was not granted any right to adjoining owner's property nor any right to go upon that property, landowner did not acquire an easement by express agreement by which he could implement his contractual right to the delivery of water. Shultz v. Atkins, 97 Idaho 770, 554 P.2d 948 (1976).

There was no express easement to use a road for ingress and egress based on a deed or a sale agreement where the language was insufficient to create such; the parties' intent was insufficient to substitute for a writing. Tower Asset Sub Inc. v. Lawrence, 143 Idaho 710, 152 P.3d 581 (2007).

Sale agreement did not create an express easement where it did not indicate an immediate grant of easement rights; the language gave the seller

the right to obtain an access easement for the benefit of some other property, and there was no intent to convey any property interest until the balance owing on the sale agreement was paid. Further, a deed did not reserve or except an easement. Capstar Radio Operating Co. v. Lawrence, 143 Idaho 704, 152 P.3d 575 (2007).

At a minimum, a valid express easement must identify the land subject to the easement and express the intent of the parties. Thus, while specific words are not required to create an express easement, the writing must make clear the parties' intention to establish a servitude. Baker v. KAL, LLC, 163 Idaho 530, 415 P.3d 939 (2018).

An easement is considered to be an encumbrance on real property and, therefore, must be in writing. Sec. Inv'r Fund LLC v. Crumb, — Idaho —, 443 P.3d 1036 (2019).

Estoppel.

Where vendor and vendee entered into a purchase and sale agreement, the terms of which were definite and, in reliance thereto, purchaser changed his position by selling his cattle to his substantial damage, under the principal of equitable estoppel, in order to promote the ends of justice and accomplish that which should be done between the parties, vendor should be, and is, estopped to deny vendee's right to purchase the subject property in accord with the terms of the agreement which the trial court found and determined to be the agreement between the parties. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

A defendant who is induced to rely on an oral agreement and who changes position to his own detriment cannot be defrauded by a plaintiff who interposes the statute of frauds to declare the agreement invalid. Idaho Migrant Council, Inc. v. Northwestern Mut. Ins. Co., 110 Idaho 804, 718 P.2d 1242 (Ct. App. 1986).

Where plaintiffs and vendor of defendant had orally agreed to sale of disputed property, plaintiffs had taken possession of the disputed land, exercised control over it for approximately three years, made substantial improvements thereon, and paid vendor $1,200 of the $1,500 sale price, and where the actual parties to the agreement testified to its essential terms, the description of the land was certain and was based on uncontradicted

testimony, and after the second payment of $600 vendor gave plaintiffs a receipt stating who the parties were and that $1,200 had been received in payment for the disputed land leaving a balance of $300 to be paid, such evidence was clear and convincing; therefore, district court did not err in concluding that defendant was estopped from raising the statute of frauds to avoid enforcement of the oral agreement and court's order that the agreement be specifically enforced was proper. Mikesell v. Newworld Dev. Corp., 122 Idaho 868, 840 P.2d 1090 (Ct. App. 1992).

Extension Agreements.

Written contract, giving an option to purchase real estate within specified time, can not be legally extended by verbal agreement. Lawyer v. Post, 109 F. 512 (9th Cir. 1901).

A written option to purchase real estate within a certain time could not be extended by an oral agreement. Southern v. Southern, 92 Idaho 180, 438 P.2d 925 (1968).

Laterals.

Ownership of laterals could not be transferred to ditch company by virtue of recitations in instruments not signed by owners, since irrigation ditches and water rights are real estate and can only be transferred by contract and deed signed by the owner, or by adverse possession, condemnation and operation of law. Hale v. McCammon Ditch Co., 72 Idaho 478, 244 P.2d 151 (1951).

Leases.

Purported lease, not definite and certain and not complete within itself as to all essentials of a lease of real property for a term of more than one year, does not satisfy requirements of this section. Gaskill v. Jacobs, 38 Idaho 795, 225 P. 499 (1924).

A lease for a term not exceeding one year is expressly authorized by this section. Abbl v. Morrison, 64 Idaho 489, 134 P.2d 94 (1943).

The evidence produced by an occupant of land did not establish the essential terms of an oral lease with sufficient definiteness and certainty so as to avoid the strictures of the statute of frauds nor was the part performance of the agreement sufficient, as a matter of law, to justify the

equitable remedy of specific enforcement. Wing v. Munns, 123 Idaho 493, 849 P.2d 954 (Ct. App. 1993).

Operation of Law.

In a title insurance dispute, limited liability company owned by insureds, to which they had conveyed the property by a properly executed warranty deed, was not considered to have obtained title to the property by operation of law and, thus, was not an insured under the policy. Point of Rocks Ranch, LLC v. Sun Valley Title Ins. Co., 143 Idaho 411, 146 P.3d 677 (2006).

Oral Agreement.

An oral agreement to substitute the mode or time of performance of an executory contract required to be in writing is valid and binding, provided that no other material term is changed and the agreement is made before the expiration of the written contract. Kelly v. Hodges, 119 Idaho 872, 811 P.2d 48 (Ct. App. 1991).

Although this section requires that a conveyance of real property must be in writing, § 9-504 provides an exception to the rule so long as partial acceptance has occurred. Thus, where it was undisputed that plaintiffs had taken possession of the disputed property under oral agreement, exercised exclusive control over it for approximately three years, made substantial improvements thereon and paid most of the purchase price, vendors were estopped from raising the statute of frauds as a defense to liability under the agreement. Mikesell v. Newworld Dev. Corp., 122 Idaho 868, 840 P.2d 1090 (Ct. App. 1992).

Because the real property contract was subject to the statute of frauds, gaps in essential terms regarding the security agreement could not be filled by parol evidence. Lawrence v. Jones, 124 Idaho 748, 864 P.2d 194 (Ct. App. 1993).

In a matter involving an appeal from a failed venture to develop a Christian retreat ranch, an oral contract existed, but there was no violation of the statute of frauds as the oral contract was for the formation of a partnership for the purpose of developing the Christian retreat ranch, not an oral contract for the sale of land, which transaction was incidental to the oral contract. Spence v. Howell, 126 Idaho 763, 890 P.2d 714 (1995).

As a consequence of this section and §§ 9-504 and 9-505(5), where alleged part performance can be explained as consistent with some other purpose or arrangement, an oral contract to sell will not be established; therefore, where evidence indicated tenants/alleged purchasers did not take any action regarding the premises other than moving in and operating the bakery, made monthly payments consistent with rental, and made no valuable improvements to premises with repairs being made by landlord/alleged vendors, no clear and convincing evidence existed to support existence of an oral contract to sell. Hinkle v. Winey, 126 Idaho 993, 895 P.2d 594 (Ct. App. 1995).

Where the parties agreed to lease a particular parcel of farmland for a term of five years at a certain yearly rent, where the plaintiff agreed to pay for water assessment, electricity and property taxes, and where there was partial performance of the contract, there was sufficient evidence to show that the oral agreement was taken outside of the statute of frauds and was enforceable. Corder v. Idaho Farmway, Inc., 133 Idaho 353, 986 P.2d 1019 (Ct. App. 1999).

Oral Gifts.

Oral gifts of land generally fall within the terms of the statute of frauds and are invalid, but the conditions of a particular case can take it out of the operation of the statute, especially when the donee has taken exclusive possession under the gift and has made valuable and permanent improvements to the realty. Erb v. Kohnke, 121 Idaho 328, 824 P.2d 903 (Ct. App. 1992).

Part Performance.

Oral contract under which one party acquired right of way and constructed irrigating ditch over lands of another, under agreement that latter should take fifty inches of water from said ditch annually for irrigation of said lands, will not be held void in action brought by successors in interest of respective parties after lapse of sixteen years. Stowell v. Tucker, 7 Idaho 312, 62 P. 1033 (1900).

Oral contract to convey right to use water for irrigation and domestic purposes, where there has been part performance of contract of sale and

possession and use of such water has changed, will be enforced in equity. Francis v. Green, 7 Idaho 668, 65 P. 362 (1901).

Where husband and wife enter into oral contract for sale of their homestead, and purchaser takes possession thereof and pays purchase-price and makes valuable improvements thereon, all of which are done with the full knowledge and consent of wife, purchaser is entitled to specific performance. Grice v. Woodworth, 10 Idaho 459, 80 P. 912 (1904).

Where defendant proceeded under contract to purchase interest in mining claims as though it had been signed by all parties, made payments under it, went into possession, participated in development of property, and, on trial, refused to produce original, it may be inferred that he had signed contract. Ferguson v. Blood, 152 F. 98 (9th Cir. 1907).

Where evidence showed that plaintiff had paid full purchase-price for a one-seventh interest in certain mining claims, or in the net proceeds arising from the working or sale thereof, plaintiff was entitled to specific performance, although contract did not comply with requirements of this section. Coughanour v. Grayson, 19 Idaho 255, 113 P. 724 (1911).

Part performance of oral agreement gives court of equity power to enforce specific performance. Wolf v. Eagleson, 29 Idaho 177, 157 P. 1122 (1916).

Mere giving of check as earnest money in transaction for transfer of real property is not sufficient evidence of purchase in absence of conveyance or other written instrument signed by party to be charged. Schulz v. Hansing, 36 Idaho 121, 209 P. 727 (1922).

Where grantor conveyed property pursuant to prior oral agreement, with agreement that grantee would reconvey after performance of certain conditions and grantee fully performed her part of the agreement, the statute of frauds did not preclude enforcement of the agreement. Chatterton v. Luker, 66 Idaho 242, 158 P.2d 809 (1945).

Oral agreement by which decedent promised to devise certain real estate to plaintiff if she did not file claim against certain estate and "stayed by him" will be enforced by specific performance and is not within the statute of frauds where there is partial or complete performance of the agreement. McMahon v. Auger, 83 Idaho 27, 357 P.2d 374 (1960).

Assuming that an amount of $619.95 originally considered as rental payments had been paid to apply on the purchase price, such payment did not by itself constitute such part performance as to justify specific performance of the oral contract, since it was only a small part of the $25,000 purchase price. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

Competent evidence may clearly show that possession, after the making of an oral contract, was definitely referable to the contract; however, the possession of land to constitute part performance of a contract which would be invalid under the statute of frauds must be actual, notorious and in pursuance of the contract. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

Even when a party was entitled to specific performance because his possession after Jan. 1, 1958, was referable to the oral contract under the evidence, the court did not find that it was such a possession as constituted part performance. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

In order to be considered as constituting part performance of a contract, improvements must be substantial in relation to the value of the property involved. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

In view of the fact that the trial court did not determine what loss was in fact suffered by respondent as a result of marketing his cattle when he did in reliance on an oral contract, nor whether the legal remedy would be inadequate, the court did not feel that such collateral act under the circumstances in this case should be regarded as part performance. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

What constitutes part performance must depend upon the particular facts of each case and the sufficiency of particular actions is a matter of law. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

Where possession is relied upon as part performance to take the case out of the statute of frauds, the taking of the possession is of great importance and the continuance of a possession assumed or commenced before the making of a contract under some right or in some capacity is not such a taking and holding of possession as may alone, or in connection with other

acts, be regarded as part performance of the contract. Boesiger v. Freer, 85 Idaho 551, 381 P.2d 802 (1963).

Where there has been full or partial performance of a contract normally within the statute of frauds, such a contract is nonetheless valid where the remedy sought is specific performance. Tew v. Manwaring, 94 Idaho 50, 480 P.2d 896 (1971).

Where practically all the individual terms of the original contract, accord and satisfaction had been performed except the delivery of the deed, the court properly decreed specific performance though the agreement to transfer the real estate was oral. Brown v. Burnside, 94 Idaho 363, 487 P.2d 957 (1971).

Where partial performance has occurred under a contract for the sale of real estate, the trial court has the discretion to compel specific performance, despite the lack of written evidence of the parties' agreement. Jolley v. Clay, 103 Idaho 171, 646 P.2d 413 (1982).

Where the evidence showed that the purchasers took possession of the property based on an oral contract and lived upon it as owners for 15 years, that they made improvements upon the property valued at $10,000, or roughly the amount of the purchase price, that purchasers paid the taxes on the property from 1964 to 1975, and that they paid $5,500 of the $10,000 purchase price, there was unquestionably part performance sufficient to take the contract out of the statute of frauds. Jolley v. Clay, 103 Idaho 171, 646 P.2d 413 (1982).

Judgment for specific performance of an oral contract to convey land was upheld because there was clear and convincing evidence of the oral agreement, there was partial performance by the brother, and the map of the property was sufficiently drawn to describe the property under the provisions of this section. Thorn Springs Ranch, Inc. v. Smith, 137 Idaho 480, 50 P.3d 975 (2002).

In a dispute regarding an oral agreement for the sale of land between two tenants in common, the part performance exception did not allow for specific performance since the alleged contract was not definite regarding what property was included in the sale. Watson v. Watson, 144 Idaho 214, 159 P.3d 851 (2007).

Powers of Equity Courts.

Courts of equity have power to so reform an executory contract valid and binding on its face as to make the statements speak the truth as it was intended, but have no power to construct an executory agreement for parties or to insert therein new and essential elements or matter that is required by the statute to be reduced to writing in order to make contract valid and binding. Allen v. Kitchen, 16 Idaho 133, 100 P. 1052 (1909).

Executory contract for sale of real estate, which fails to designate the state, county, civil, or political district in which land is situated, and fails to disclose the municipal or other subdivision to which the tract of land is an "addition," is insufficient and void description and cannot be supplied or aided by parol evidence. Allen v. Kitchen, 16 Idaho 133, 100 P. 1052 (1909). But see Barnhart v. Hansen, 36 Idaho 419, 211 P. 438 (1922).

Under provisions of § 9-504, provisions of this section must not be construed to abridge power of any court to compel the specific performance of agreement made in regard to sale of real estate in case of part performance thereof. King v. Seebeck, 20 Idaho 223, 118 P. 292 (1911).

Where one party has so acted in reliance upon contract that it would be perpetrating fraud upon him to allow other party to repudiate contract, equity will regard case as having been removed from operation of statute of frauds. Tsuboi v. Cohn, 40 Idaho 102, 231 P. 708 (1924).

Doctrine of estoppel in pais, to avoid injustice by enforcement of this section according to its strict letter, is sparingly applied by courts of equity. Quirk v. Bedal, 42 Idaho 567, 248 P. 447 (1926).

Where a contract has been fully performed by the purchaser and the purchaser has been given possession by the seller and has made valuable improvements on the property, the statute of frauds is satisfied and the purchaser is entitled to specific performance in equity, even though the contract is oral. Wormward v. Taylor, 70 Idaho 450, 221 P.2d 686 (1950).

Right of Way.

Right of way for ditch over land is an easement or interest in real property, which, under this section, can be created only by operation of law, or a conveyance or other instrument in writing, subscribed by the party granting such easement or right of way. McReynolds v. Harrigfeld, 26 Idaho

26, 140 P. 1096 (1914), overruled on other grounds, Eliopulos v. Kondo Farms, Inc. 102 Idaho 915, 643 P.2d 1085 (Ct. App. 1982).

Security Provision.

Although a real estate contract need not contain a security provision, if none is contemplated, once parties attempt to provide for security it becomes an essential term of the contract. Lawrence v. Jones, 124 Idaho 748, 864 P.2d 194 (Ct. App. 1993).

Settlement Agreement.

A stipulation to settle litigation whose subject matter is within the statute of frauds must be in writing and signed by the parties to be charged; thus, when the subject matter of the stipulation falls within the proscription of the statute of frauds and the agreement is oral and executory, it is unenforceable. Olson v. Idaho Dep't of Water Resources, 105 Idaho 98, 666 P.2d 188 (1983).

A settlement agreement which includes a deed of trust falls within the scope of this section and must be in writing: but a party may be equitably estopped from asserting the statute of frauds where his attorney had an apparent authority to enter the oral agreement and the second party had no notice that the attorney lacked the authority to enter the binding agreement Ogden v. Griffith, 149 Idaho 489, 236 P.3d 1249 (2010).

Sufficiency of Writing.

Receipt reading, "Lowe, Idaho, March 17, 1902. Received from S. C. Kurdy, one hundred and ninety dollars on land, Sec. 25, Ts. 32 R. 2E. 160 acres," signed by parties sought to be charged, is insufficient to support demand for specific performance. Kurdy v. Rogers, 10 Idaho 416, 79 P. 195 (1904).

Deed properly executed and left with attorney of grantor of real estate for the inspection of grantee, who has already paid the purchase-price, is a sufficient writing to remove the bar of the statute of frauds and conveyance may be specifically enforced. Robbins v. Porter, 12 Idaho 738, 88 P. 86 (1906).

To comply with this section, the writing must state contract with such certainty that its essentials will be known from the memorandum itself or

by reference contained in it to some other writing, without recourse to parol evidence. Thompson v. Burns, 15 Idaho 572, 99 P. 111 (1908).

Paper reading, "Robin, June 16, 1902. We, the undersigned citizens of Robin, Idaho, voluntarily agree to deed and redeed to the old lines as they stand at present" cannot be specifically enforced. Armstrong v. Henderson, 16 Idaho 566, 102 P. 361 (1909).

Prospectus containing statements as to character and nature of contracts proposed to be made and entered into by company issuing prospectus, standing alone, is not sufficient to support an action. Idaho Fruit Land Co. v. Great W. Beet Sugar Co., 18 Idaho 1, 107 P. 989 (1910).

The statute of frauds does not invalidate all contracts with imperfect legal descriptions for it is not pressed to the extreme of a literal and rigid logic. Russell v. Russell, 99 Idaho 151, 578 P.2d 1082 (1978).

Where earnest money agreement for the purchase of a farm referred to the property by giving the name of the present owner and the address of the property and further provided that a full legal description was attached, fact that the full legal description was contained on a separate sheet of paper which also contained a description of other land not involved in the transaction and was not physically attached to the agreement but was kept beside the agreement in the broker's files, did not invalidate the agreement for lack of sufficient legal description thereby requiring resort to parol evidence. Russell v. Russell, 99 Idaho 151, 578 P.2d 1082 (1978).

The statute of frauds was satisfied where party only initialed the changes since the traditional form of signature is, of course, the handwritten name of the signer but initials or any symbol may also be used. George W. Watkins Family v. Messenger, 115 Idaho 386, 766 P.2d 1267 (Ct. App. 1988).

Where both parties to real estate purchase and sale agreement mutually acknowledge the existence of their agreement with respect to the purchase of the property, such agreement was not invalid under the statute of frauds for lack of seller's signature. Kelly v. Hodges, 119 Idaho 872, 811 P.2d 48 (Ct. App. 1991).

Because all of the documents in the case which purported to transfer or convey real property were in writing and subscribed by settlor, there was no violation of parol evidence rule, and because there was a formal, fully

executed trust with amendments which supplied any terms not contained in the script, no parol evidence was needed to supply any missing terms. Salfeety v. Seideman, 127 Idaho 817, 907 P.2d 794 (1995).

Legal description in a real estate purchase agreement was insufficient to satisfy the statute of frauds; while it might be possible for someone to identify the property being conveyed by referring to the descriptions in the tax notices that were referenced in an addendum to the purchase agreement, one could not tell exactly what property was being conveyed merely by the descriptions. Additionally, the description in the exclusive seller representation agreement, which only contained the home address and the appropriate acreage being sold, was insufficient to meet the statutory requirements of §§ 54-2050(1)(b) or this section. Garner v. Bartschi, 139 Idaho 430, 80 P.3d 1031 (2003).

A property description in a real estate sales contract that consisted solely of a physical address did not satisfy the statute of frauds. In re McMurdie, 448 B.R. 826 (Bankr. D. Idaho 2010).

Annexation agreement between a city and a property owner created an enforceable lien under § 9-505(4) and this section because the agreement and its exhibits adequately described the location, quantity, and exterior boundaries of the property. It was not necessary to provide specific descriptions of each lot within the planned subdivision. Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012), aff'd, 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

Transfer by Gift.

Where a donee of real property takes exclusive possession under an oral agreement and makes valuable and permanent improvements, the gift is not invalid under the statute of frauds. Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976).

Trusts.

Although a trust in real property can arise by implication or operation of law without a writing as required by this section, a person claiming ownership through such a trust must establish such claim by evidence that is clear, satisfactory and convincing. The determination of whether such evidence has been presented is a question of fact to be determined by the

trial court, and that court's findings will be disturbed only if they are clearly erroneous. Hettinga v. Sybrandy, 126 Idaho 467, 886 P.2d 772 (1994).

Plaintiff's assertion that defendants bought dairy farm intending to hold title in trust for plaintiff failed where plaintiff merely offered his own uncorroborated testimony that the defendants entered into oral contract to let the plaintiffs take over or assume ownership of the dairy, and that a transfer to them would occur sometime in the future, for such testimony failed to present clear and convincing evidence of any fraudulent representation on the part of defendants in order to establish a constructive trust in favor of plaintiff. Hettinga v. Sybrandy, 126 Idaho 467, 886 P.2d 772 (1994).

Verbal Contracts.

Verbal contract for sale or transfer of real estate is not admissible in evidence to establish title against a stranger to contract. McGinness v. Stanfield, 6 Idaho 372, 55 P. 1020 (1898).

Written contract for sale of real property may be modified by a subsequent oral agreement, but where it is claimed that oral agreement modifies the terms of a written contract, evidence to establish such oral agreement should be clear and satisfactory. Prairie Dev. Co. v. Leiberg, 15 Idaho 379, 98 P. 616 (1908).

Oral agreement for transfer of real property is void, where not evidenced by any written instrument or delivery of possession of real property. Schulz v. Hansing, 36 Idaho 121, 209 P. 727 (1922).

The complaint sufficiently stated a cause of action where former realty owners against whom mortgage had been foreclosed alleged an agreement had been entered into with junior lienholder that latter was to redeem property on last day of redemption period and that former owners were then to secure a purchaser for such realty and personal property located thereon, they to be compensated for such services by the grant of certain parcels of land, but buyer and junior lienholder in violation of such oral agreement consummated the sale depriving former owners of agreed compensation. Harvey v. Brown, 80 Idaho 379, 330 P.2d 982 (1958).

Oral sales of real property are void. Good v. Hansen, 110 Idaho 953, 719 P.2d 1213 (Ct. App. 1986).

Warranty Deed Delivered to Escrow Holder.

A warranty deed delivered to escrow holder was held a sufficient "note" or "memorandum" to take an oral escrow transaction out of the statute of frauds where the purchase price had been paid. Nelson v. Altizer, 65 Idaho 428, 144 P.2d 1009 (1943).

Water Rights.

A water right is defined, not in terms of metes and bounds as in other real property, but in terms of the priority, amount, season of use, purpose of use, point of diversion, and place of use and a compromise, in a stipulation to settle a water rights dispute, to change or exchange any of these definitional factors would be identical to a compromise to change or exchange a portion of the metes and bounds description of real property and, as such, would fall directly within the statute of frauds. Olson v. Idaho Dep't of Water Resources, 105 Idaho 98, 666 P.2d 188 (1983).

Where oral stipulation to settle water rights dispute changed existing water rights by reshuffling priority dates and changing amounts of use, such stipulation was a contract falling within the statute of frauds and, if still executory, was unenforceable. Olson v. Idaho Dep't of Water Resources, 105 Idaho 98, 666 P.2d 188 (1983).

Cited Howes v. Barmon, 11 Idaho 64, 81 P. 48 (1905); Rowe v. Stevens, 25 Idaho 237, 137 P. 159 (1913); Davenport v. Burke, 27 Idaho 464, 149 P. 511 (1915); Keane v. Kibble, 28 Idaho 274, 154 P. 972 (1915); Bedal v. Johnson, 37 Idaho 359, 218 P. 641 (1923); Crouch v. Bishoff, 76 Idaho 216, 280 P.2d 419 (1955); Roundy v. Waner, 98 Idaho 625, 570 P.2d 862 (1977); Ford v. Lord, 99 Idaho 580, 586 P.2d 270 (1978); Golden Condor, Inc. v. Bell, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984); Hunt v. Hunt, 110 Idaho 649, 718 P.2d 560 (Ct. App. 1985); Costello v. Watson, 111 Idaho 68, 720 P.2d 1033 (Ct. App. 1986); Old Stone Capital Corp. v. John Hoene Implement Corp., 647 F. Supp. 916 (D. Idaho 1986); Estate of E.A. Collins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007); Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008); Callies v. O'Neal, 147 Idaho 841, 216 P.3d 130 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, Statute of Frauds, § 1 et seq.

C.J.S. — 37 C.J.S., Statute of Frauds, § 1 et seq.

ALR. — Sufficiency of description of terms and conditions of lease, or lease provision, so as to comply with statute of frauds. 12 A.L.R.6th 123.

Idaho Code § 9-504

§ 9-504. Exceptions to preceding section. — The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

History.

C.C.P 1881, § 936; R.S., R.C., & C.L., § 6008; C.S., § 7975; I.C.A., § 16-504.

CASE NOTES

Estoppel.

Fraudulent conveyance.

Oral contract.

Part performance.

Resulting trust.

Statute of frauds.

Estoppel.

Where plaintiffs and vendor of defendant had orally agreed to sale of disputed property, plaintiffs had taken possession of the disputed land, exercised control over it for approximately three years, made substantial improvements thereon, and paid vendor $1,200 of the $1,500 sale price, and where the actual parties to the agreement testified to its essential terms, the description of the land was certain and was based on uncontradicted testimony, and after the second payment of $600 vendor gave plaintiffs a receipt stating who the parties were and that $1,200 had been received in payment for the disputed land leaving a balance of $300 to be paid, such evidence was clear and convincing; therefore, district court did not err in concluding that defendant was estopped from raising the statute of frauds to avoid enforcement of the oral agreement and court's order that the

agreement be specifically enforced was proper. Mikesell v. Newworld Dev. Corp., 122 Idaho 868, 840 P.2d 1090 (Ct. App. 1992).

Fraudulent Conveyance.

In action to quiet title based on fraudulent conveyance from father to son, the court erred in refusing to admit in evidence letters constituting receipts for payment. Van Winkle v. Van Winkle, 56 Idaho 588, 57 P.2d 692 (1936).

Oral Contract.

An oral contract for the conveyance of real property or under which the title thereto is acquired may be enforced, is binding upon the parties thereto, and is not within the statute of frauds, where there is partial or complete performance of the same. Stowell v. Tucker, 7 Idaho 312, 62 P. 1033 (1900); Feeney v. Chester, 7 Idaho 324, 63 P. 192 (1900); Male v. Leflang, 7 Idaho 348, 63 P. 108 (1900); Francis v. Green, 7 Idaho 668, 65 P. 362 (1901); Barton v. Dunlap, 8 Idaho 82, 66 P. 832 (1901); Deeds v. Stevens, 8 Idaho 514, 69 P. 534 (1902); Fleming v. Baker, 12 Idaho 346, 85 P. 1092 (1906); Havlick v. Davidson, 15 Idaho 787, 100 P. 91 (1909); King v. Seebeck, 20 Idaho 223, 118 P. 292 (1911); Houser v. Hobart, 22 Idaho 735, 127 P. 997 (1912); Wolf v. Eagleson, 29 Idaho 177, 157 P. 1122 (1916).

Part Performance.

The doctrine of part performance has frequently been invoked by lessees against lessors. Fry v. Weyen, 58 Idaho 181, 70 P.2d 359 (1937).

Oral agreement by which decedent promised to devise certain real estate to plaintiff if she did not file claim against certain estate and "stayed by him" will be enforced by specific performance and is not within the statute of frauds, where there is partial or complete performance of the agreement. McMahon v. Auger, 83 Idaho 27, 357 P.2d 374 (1960).

Extension of a lease by oral agreement did not constitute part performance of the option to purchase by a certain time in the original lease so as to take it out of the statute of frauds. Southern v. Southern, 92 Idaho 180, 438 P.2d 925 (1968).

An oral agreement to devise certain land to the owner in consideration of his sale of it to the party for a lower price than he had been offered by others was brought within the exceptions of this section by the owner's

fulfillment of the agreement by sale and conveyance of land as agreed. Quayle v. Mackert, 92 Idaho 563, 447 P.2d 679 (1968).

Where practically all the individual terms of the original contract, accord and satisfaction had been performed except the delivery of the deed, the court properly decreed specific performance though the agreement to transfer the real estate was oral. Brown v. Burnside, 94 Idaho 363, 487 P.2d 957 (1971).

A defendant who is induced to rely on an oral agreement and changes position, through partial performance, to his own detriment cannot be defrauded by a plaintiff who interposes the statute of frauds to declare the agreement invalid. Roundy v. Waner, 98 Idaho 625, 570 P.2d 862 (1977).

Where parents invited their daughter and her husband to purchase certain property and the daughter and her spouse, relying on the oral agreement, made extensive repairs to the property and paid a number of the parents' debts, their part performance took the transaction out of the statute of frauds and justified the trial court's decision to quiet title in the daughter and her husband. Roundy v. Waner, 98 Idaho 625, 570 P.2d 862 (1977).

Where partial performance has occurred under a contract for the sale of real estate, the trial court has the discretion to compel specific performance, despite the lack of written evidence of the parties' agreement. Jolley v. Clay, 103 Idaho 171, 646 P.2d 413 (1982).

Where the evidence showed that the purchasers took possession of the property based on an oral contract and lived upon it as owners for 15 years, that they made improvements upon the property valued at $10,000, or roughly the amount of the purchase price, that purchasers paid the taxes on the property from 1964 to 1975, and that they paid $5,500 of the $10,000 purchase price, there was unquestionably part performance sufficient to take the contract out of the statute of frauds. Jolley v. Clay, 103 Idaho 171, 646 P.2d 413 (1982).

Although § 9-503 requires that a conveyance of real property must be in writing, this section provides an exception to the rule so long as partial acceptance has occurred. Thus, where it was undisputed that plaintiffs had taken possession of the disputed property under oral agreement, exercised exclusive control over it for approximately three years, made substantial

improvements thereon and paid most of the purchase price, vendors were estopped from raising the statute of frauds as a defense to liability under the agreement. Mikesell v. Newworld Dev. Corp., 122 Idaho 868, 840 P.2d 1090 (Ct. App. 1992).

The evidence produced by an occupant of land did not establish the essential terms of an oral lease with sufficient definiteness and certainty so as to avoid the strictures of the statute of frauds, nor was the part performance of the agreement sufficient, as a matter of law, to justify the equitable remedy of specific enforcement. Wing v. Munns, 123 Idaho 493, 849 P.2d 954 (Ct. App. 1993).

As a consequence of § 9-503, this section and § 9-505(5), where alleged part performance can be explained as consistent with some other purpose or arrangement, an oral contract to sell will not be established; therefore, where evidence indicated tenants/alleged purchasers did not take any action regarding the premises other than moving in and operating the bakery, made monthly payments consistent with rental, and made no valuable improvements to premises with repairs being made by landlord/alleged vendors, no clear and convincing evidence existed to support existence of an oral contract to sell. Hinkle v. Winey, 126 Idaho 993, 895 P.2d 594 (Ct. App. 1995).

Doctrine of part performance could not make an oral contract for the purchase of real property subject to specific enforcement, where the absence of a meeting of the minds on a material provision supported the conclusion that no contract had been formed by the parties. Chapin v. Linden, 144 Idaho 393, 162 P.3d 772 (2007).

This section provides for a part-performance exception only to the general statute of frauds provisions of § 9-503. It has no application to the statutes regulating real estate brokers and agents found in Title 54, Chapter 20, Idaho Code. Johnson v. McPhee, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

Resulting Trust.

Resulting trust arises by operation of law in favor of person who advances purchase-money for land, though title be taken in name of another; or in favor of person for whom it is advanced by way of a loan,

title being taken in the name of lender. Such trust, being one which results by implication or construction of law, does not fall within provisions of the statute of frauds and may be established by parol evidence. Pittock v. Pittock, 15 Idaho 426, 98 P. 719 (1908); Coughanour v. Grayson, 19 Idaho 255, 113 P. 724 (1911).

This section empowers the court to decree a resulting trust where a party fails to establish an express trust, since a resulting trust may be established by parol evidence. Aker v. Aker, 52 Idaho 713, 20 P.2d 796, cert. denied, 290 U.S. 587, 54 S. Ct. 80, 78 L. Ed. 518 (1933).

Although a trust in real property can arise by implication or operation of law without a writing as required by § 9-503, a person claiming ownership through such a trust must establish such claim by evidence that is clear, satisfactory and convincing. The determination of whether such evidence has been presented is a question of fact to be determined by the trial court, and that court's findings will be disturbed only if they are clearly erroneous. Hettinga v. Sybrandy, 126 Idaho 467, 886 P.2d 772 (1994).

Plaintiff's assertion that defendants bought dairy farm intending to hold title in trust for plaintiff failed where plaintiff merely offered his own uncorroborated testimony that the defendants entered into oral contract to let the plaintiffs take over or assume ownership of the dairy, and that a transfer to them would occur sometime in the future, for such testimony failed to present clear and convincing evidence of any fraudulent representation on the part of defendants in order to establish a constructive trust in favor of plaintiff. Hettinga v. Sybrandy, 126 Idaho 467, 886 P.2d 772 (1994).

Statute of Frauds.

Where a contract has been fully performed by the purchaser and the purchaser has been given possession by the seller and has made valuable improvements on the property, the statute of frauds is satisfied and the purchaser is entitled to specific performance in equity, even though the contract is oral. Wormward v. Taylor, 70 Idaho 450, 221 P.2d 686 (1950).

Statute of frauds does not apply to action by corporation to recover profits made by office, since action is one to recover under an implied trust. Melgard v. Moscow Idaho Seed Co., 73 Idaho 265, 251 P.2d 546 (1952).

Cited Crittenden v. Crane, 107 Idaho 213, 687 P.2d 996 (Ct. App. 1984); Costello v. Watson, 111 Idaho 68, 720 P.2d 1033 (Ct. App. 1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, Statute of Frauds, § 1 et seq.

C.J.S. — 37 C.J.S., Statute of Frauds, § 1 et seq.

§ 9-505. Certain agreements to be in writing. — In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 9-506, Idaho Code.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

5. A promise or commitment to lend money or to grant or extend credit in an original principal amount of fifty thousand dollars ($50,000) or more, made by a person or entity engaged in the business of lending money or extending credit.

History.

C.C.P. 1881, § 937; R.S., R.C., & C.L., § 6009; am. 1919, ch. 149, § 79a, p. 443; C.S., § 7976; I.C.A., § 16-505; am. 1993, ch. 397, § 1, p. 1460; am. 1996, ch. 177, § 1, p. 566.

STATUTORY NOTES

Cross References.

Contracts of executors or administrators, § 15-3-808.

Leases of more than ten head of livestock to be in writing, § 25-2001.

Sales contracts, § 28-2-201.

Compiler's Notes.

Former subsection (4) of this section, concerning lease of chattels, was repealed by S.L. 1967, ch. 161, § 10-102. For present law, see § 28-2-201.

CASE NOTES

Acknowledgement.

Annexation agreement.

Application of section.

Boundary of land.

Concealment of material fact.

Construction.

Contents of memorandum.

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A defendant's admission of an unwritten contract during the course of litigation will prevent the defendant from relying upon the statute of frauds, if the acknowledgement is of the exact alleged contract and not just evidence of some agreed terms. Peterson v. Shore, 146 Idaho 476, 197 P.3d 789 (Ct. App. 2008).

Annexation Agreement.

Annexation agreement between a city and a property owner created an enforceable lien under subsection (4) of this section and § 9-503 because the agreement and its exhibits adequately described the location, quantity, and exterior boundaries of the property. It was not necessary to provide specific descriptions of each lot within the planned subdivision. Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.), 488 B.R. 130

(Bankr. D. Idaho 2012), aff'd, 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

Application of Section.

This section does not apply to action by corporation to recover profits made by office, since action is one to recover under an implied trust. Melgard v. Moscow Idaho Seed Co., 73 Idaho 265, 251 P.2d 546 (1952).

This section applies to agreements for the leasing of real property, not to the assignment of an existing lease agreement. Hunt v. Hunt, 110 Idaho 649, 718 P.2d 560 (Ct. App. 1985).

The statute of frauds is inapplicable when a contract, although not fully performed by both sides, is mutually acknowledged to exist. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

The term "full" performance means performance of all obligations by both sides to a contract; it is universally recognized that the statute of frauds is inapplicable to a contract fully performed by both sides. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

This section generally requires a written promise; however, an exception exists when the promise is original or independent from, and not merely collateral to, the agreement between the promisee and a third-party debtor since an original obligation of the promisor is not covered by the terms of the statute of frauds. Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co., 115 Idaho 373, 766 P.2d 1254 (Ct. App. 1988).

A contract dispute between a pension services company and a home builder, who developed a subdivision with a loan of funds from the pension company, related to the repayment terms of the loan and not to the sale of property; thus, the provisions of this section were not applicable. Am. Pension Servs. v. Cornerstone Home Builders, Llc, 147 Idaho 638, 213 P.3d 1038 (2009).

Because an employer's promise to answer for a newly hired employee's loan obligation to her previous employer directly benefitted the new employer, the agreement is an exception to the statute of frauds requirement of written evidence. Campbell v. Parkway Surgery Ctr., LLC, 158 Idaho 957, 354 P.3d 1172 (2014).

Subsection (2) did not apply to a vice president's breach of contract claim, where he alleged that an investment advisory company and his employer assumed joint liability for his compensation as original obligors, the record supported those allegations, and there was triable issue of fact as to whether the advisory company intended to bind itself to pay the vice president's compensation. Bailey v. Peritus 1 Assets Mgmt., LLC, 162 Idaho 458, 398 P.3d 191 (2017).

Boundary of Land.

Where the location of true boundary line between coterminous owners is unknown to either party and is uncertain or in dispute, an oral agreement between them fixing the boundary line is not regarded as a conveyance of real property in violation of the statute of frauds, but merely as the location of respective existing estates and the common boundary of each of the parties. Downing v. Boehringer, 82 Idaho 52, 349 P.2d 306 (1960).

Where the location of a true boundary line between coterminous owners is known to either of the parties, or is not uncertain and not in dispute, oral agreement between them purporting to establish another line between them as the boundary between their properties constitutes an attempt to convey real property in violation of statute of frauds and is invalid. Downing v. Boehringer, 82 Idaho 52, 349 P.2d 306 (1960).

Where the location of the true boundary line between coterminous owners is unknown, uncertain or in dispute, the coterminous owners may orally agree upon a boundary line, and the agreement, when possession is taken under it, will be binding upon the owners and those claiming under them and will not violate the statute of frauds for lack of a writing because it is not a conveyance of land, but merely the locating and establishing of the common boundary. Hyde v. Lawson, 94 Idaho 886, 499 P.2d 1242 (1972), overruled on other grounds, Nesbitt v. Wolfkiel, 100 Idaho 396, 598 P.2d 1046 (1979).

In every case where a boundary by agreement is asserted, the underlying issue is whether such an agreement represents an oral conveyance of land in violation of the statute of frauds. The general rule of case law is that an agreement which arises from uncertainty or dispute over the location of a boundary is valid and does not constitute an oral conveyance of land. Norwood v. Stevens, 104 Idaho 44, 655 P.2d 938 (Ct. App. 1982).

Mediation agreement fell within the boundary agreement exception to statute of frauds, the elements of which are: (1) an uncertain or disputed boundary and (2) an express or implied agreement subsequently fixing that boundary. Goodman v. Lothrop, 143 Idaho 622, 151 P.3d 818 (2007).

An oral agreement purporting to establish a new boundary line between two properties, and thus transfer land from one owner to another, would violate the statute of frauds. Fischer v. Croston, 163 Idaho 331, 413 P.3d 731 (2018).

There is an exception to the general rule that an agreement to convey real estate is invalid under the statute of frauds unless it is committed to writing, where such an agreement qualifies as a boundary by agreement. This exception is permitted because such an agreement does not constitute an oral conveyance of land. The two requirements for a boundary by agreement are: an uncertain or disputed boundary and an express or implied agreement as to the new boundary. Fischer v. Croston, 163 Idaho 331, 413 P.3d 731 (2018).

Concealment of Material Fact.

Where there was no evidence at the trial court level to indicate that defendants concealed from buyer a "no sale" policy regarding lot in question, there was no knowingly false statement or concealment of a material fact sufficient to entitle plaintiffs to enforcement of an oral contract under a theory of equitable estoppel. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Promissory estoppel was not properly invoked as a defense to Idaho's statute of frauds, in a case dealing with a bank promising to lend money above the statutory amount, where borrower never proved that the bank made any false representations or concealed any material facts with actual or constructive knowledge of the truth. Kimmes v. D.L. Evans Bank (In re Kimmes), 2014 Bankr. LEXIS 543 (Bankr. D. Idaho Feb. 10, 2014), aff'd, Kimmes v. D.L. Evans Bank (In re Kimmes), 528 B.R. 436 (D. Idaho 2015).

Construction.

This section is strictly construed. Kerr v. Finch, 25 Idaho 32, 135 P. 1165 (1913); Kratzer v. Day, 12 F.2d 724 (9th Cir. 1926).

When consideration of a party's promise is for money to be furnished to or received by a third person, if transaction be such that third person remains responsible to person who furnishes him with such money, such promise is collateral and, under the statute of frauds, will not bind the party unless it be in writing. Storer v. Heitfeld, 19 Idaho 170, 113 P. 80 (1910).

Where there is no allegation in complaint that third person was responsible to person who furnished him with money, or that defendant was to pay debt or default of third person, or that there was any personal liability on his part to do so, transaction is not brought within provisions of this section. Hoy v. Anderson, 39 Idaho 430, 227 P. 1058 (1924).

While evidence to answer for debt or default of another must be in writing, no such rule obtains where party treats debt as his own. Kelly v. Arave, 41 Idaho 723, 243 P. 366 (1925).

The legislature used "extend[ing]" in subsection 5 to mean "granting or making available" and not as a grant to lengthen or "extend" the period for repayment of the loan. Rule Sales & Serv., Inc. v. U.S. Bank Nat'l Ass'n, 133 Idaho 669, 991 P.2d 857 (Ct. App. 1999).

Contents of Memorandum.

Although no particular form of language or instrument is necessary to constitute a note or memorandum required by the statute of frauds, the essentials of the oral agreement must be contained in the writing(s); the memorandum must plainly set forth the parties to the contract, the subject matter thereof, the price or consideration, a description of the property, and all the essential terms and conditions of the agreement. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Court Judgments.

Statute of frauds and parol evidence rule had no application to a court judgment that was not contractually agreed upon by stipulation or settlement agreement. McKoon v. Hathaway, 146 Idaho 106, 190 P.3d 925 (Ct. App. 2008).

Covenant Not to Compete.

In an action to enforce an unwritten five-year covenant not to compete, the employee was not estopped to invoke the statute of frauds, where the

employer failed to identify any actions, such as payment of extra consideration, referable to and evidencing the covenant. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

The five-year covenant not to compete which contained no reference to death was not removed from the statute of frauds by the possible termination by death. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

Non-compete covenant prohibited competition for five years, which did fall within the statute of frauds, but the covenantor did not show how this particular assignment of the non-compete covenant from one corporation to another was subject to the statute of frauds, i.e., that the assignment itself could not be performed within one year. Bybee v. Isaac, 145 Idaho 251, 178 P.3d 616 (2008).

Debt of Another.

One who has property of debtor in his hands and agrees to sell it and to apply proceeds of sale to payment of debtor's debt does not thereby promise to answer for the debt of another, within meaning of this section. Smith v. Caldwell, 6 Idaho 436, 55 P. 1065 (1899).

Stockholder's promise to pay creditor's claim against corporation, if creditor would accept less than full amount, was within statute of frauds. Reed v. Samuels, 43 Idaho 55, 249 P. 893 (1926).

Agreement by creditor to pay rent due by debtor, in consideration of landlord refraining from attaching goods in tenant's store, was not within statute of frauds where tenant owed creditor for some of the goods and creditor removed these from store. Sullivan v. Idaho Whsle. Co., 43 Idaho 149, 249 P. 895 (1926).

Agreement to pay for material or services furnished independent contractor is promise to answer for debt, default, or miscarriage of another and is within statute. McQuade v. Edward Rutledge Timber Co., 46 Idaho 471, 268 P. 570 (1928).

Indorsement by stockholder in national bank of notes of investment company organized by stockholders to take over doubtful paper of bank was not within statute of frauds where it was made in consideration of other

stockholders taking over bank and all his bank stock. Thomas v. Hoebel, 46 Idaho 744, 271 P. 931 (1928).

Where amount of mortgage indebtedness is deducted from purchase-price and retained by purchaser, purchaser, assuming mortgage indebtedness, does not promise to answer for debt of another so as to require agreement to be in writing. Sickman v. Moler, 47 Idaho 446, 276 P. 309 (1929). See also First Nat'l Bank v. Peterson, 47 Idaho 794, 279 P. 302 (1929).

Defendants who entered into oral contract to purchase lumber from plaintiff, which lumber was thereafter delivered to a corporation organized by the defendants, could not contend that, if they were held liable, they would be held responsible for the debt, default or miscarriage of another without a promise in writing, since the defendants were the principal debtors and not the sureties. Hoff Bldg. Supply v. Wright, 76 Idaho 298, 282 P.2d 478 (1955).

Where the shareholders of a corporation had mutually agreed to pay attorney's fees, such agreement was made separately and remotely from earlier written promises to guarantee the obligations of the corporation, and the defense of the lawsuits in question was for the benefit of the shareholders in their personal capacities, the oral agreement that obligated each shareholder to pay one-third of the attorney's fees incurred for the defense of lawsuits against the corporation was an original one under § 9-506, rather than a collateral agreement within the terms of subdivision 2 of this section. Therefore, the statute of frauds did not bar plaintiff shareholder's claim for reimbursement of money expended for attorney's fees. Beaupre v. Kingen, 109 Idaho 610, 710 P.2d 520 (1985).

An oral agreement that the bank would lend the lessee money, which would be used to pay the rent, in return for subordination of the lessor's security interest in the lessee's crops, was not a promise to answer for the debt of another and did not contravene subdivision 2 of this section. Johnson Cattle Co. v. Idaho First Nat'l Bank, 111 Idaho 604, 716 P.2d 1376 (Ct. App. 1986).

Contractor's action to enforce an oral agreement by a business/property owner to guaranty her tenant's credit card payment was barred by

subsection 2., as there was not a sufficient writing signed by the owner. Mickelsen Constr., Inc. v. Horrocks, 154 Idaho 396, 299 P.3d 203 (2013).

Easements.

Easements are interests in real property, and subdivision 5 provides that interests in real property must be transferred by written instrument; an easement established by unwritten agreement is merely a license, revocable by the licensor. Bob Daniels & Sons v. Weaver, 106 Idaho 535, 681 P.2d 1010 (Ct. App. 1984).

Effect of Complete Performance.

Statute of frauds does not apply to contracts fully performed. Willis v. Willis, 33 Idaho 353, 194 P. 470 (1920).

Oral contract to leave property to another on death of promisor does not come within inhibition of statute of frauds when there has been complete performance on the part of the promisees. Bedal v. Johnson, 37 Idaho 359, 218 P. 641 (1923).

Delivery of warranty deed to escrow agent was sufficient to take escrow agreement out of the statute of frauds. Nelson v. Altizer, 65 Idaho 428, 144 P.2d 1009 (1943).

An agreement by defendant to pay plaintiff $10,000, payable $1,000 a year for ten years, was taken out of the statute of frauds where plaintiff had performed her share of the bargain, to-wit; by refraining from filing of proceeding to contest will of father of parties. Sims v. Purcell, 74 Idaho 109, 257 P.2d 242 (1953).

Full performance would remove an oral contract from the proscriptions of the statute of frauds, even if it were applicable. Fairfax v. Ramirez, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

Effect of Part Performance.

Part performance of an oral agreement for lease of property for longer than a year takes same out of the statute and renders it enforceable. Deeds v. Stephens, 8 Idaho 514, 69 P. 534 (1902).

A deed properly executed and left with the attorney of the grantor of real estate is sufficient to remove the bar of the statute of frauds in an action for

specific performance, where the purchase price has been paid. Robbins v. Porter, 12 Idaho 738, 88 P. 86 (1906).

The doctrine of part performance by lessees against lessors is sustained in this state. Fry v. Weyen, 58 Idaho 181, 70 P.2d 359 (1937).

Part performance of an oral contract for the conveyance of real property takes same out of the statute and may be enforced by specific performance. Anselmo v. Beardmore, 70 Idaho 392, 219 P.2d 946 (1950).

The transaction in question was taken out of the statute of frauds because it had been partially executed by the transfer of the property to the defendant by two of the debtors, where when judgment became a lien upon the land, two of the three judgment debtors sold to the purchaser, the purchaser while failing to do so having orally agreed to pay the judgment, the creditor thereupon levying upon sums of such third debtor to satisfy the judgment. Jones v. Better Homes, Inc., 79 Idaho 294, 316 P.2d 256 (1957).

Where there has been full or partial performance of a contract normally within the statute of frauds, such a contract is nonetheless valid where the remedy sought is specific performance. Tew v. Manwaring, 94 Idaho 50, 480 P.2d 896 (1971).

Sufficient part performance by a purchaser of real property removes the contract from the operation of the statute of frauds, and although the equitable doctrine of part performance is inapplicable to an action at law, satisfaction of the doctrine of part performance would entitle the purchaser to specific performance. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Where city's approval of subdivision of property was a condition precedent to the existence of any contract, oral or written, for the sale of property and purchasers were willing to assume expense of securing subdivision as part of negotiation costs, purchasers' actions in having property surveyed and submitting subdivision plat did not constitute possession, either actual or pursuant to oral agreement, sufficient to establish part performance and remove oral contract from the statute of frauds; moreover, the cost of securing subdivision approval ($436) was not substantial enough in relation to the $90,000 value of the property to

establish part performance. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Where employee's reliance when accepting his job transfer and taking out interest-free home equity loan was no less referable to the loan agreement itself, and to comply policies identified in the record, than to the oral agreement by employer to buy employee's house and where no acts separately referable to the oral agreement have been demonstrated, there was no part performance sufficient to take the agreement out of the statute of frauds. IBM Corp. v. Lawhorn, 106 Idaho 194, 677 P.2d 507 (Ct. App. 1984).

Where purchaser did not take possession of the property or make any improvements thereof, nor paid taxes thereon, there was no part performance which would take oral contract for sale of land out of the statute of frauds. Hemingway v. Gruener, 106 Idaho 422, 679 P.2d 1140 (1984).

Part performance, when established, yields an equitable remedy — specific performance of the oral agreement by the other party; accordingly, where employee did not seek by his counterclaim to enforce oral agreement for a sale of property to employer, the doctrine of part performance as an exception to statute of frauds would yield a remedy unsuited to the purpose for which the doctrine was urged and court would not apply it. IBM Corp. v. Lawhorn, 106 Idaho 194, 677 P.2d 507 (Ct. App. 1984).

In some circumstances, an oral agreement may be removed from the strictures of the statute of frauds by part or full performance; the exception protects a party who demonstrates reliance upon an oral contract by acts that would not have been done except for the contract. However, such reliance cannot be established by conduct referable to a cause other than the oral contract. IBM Corp. v. Lawhorn, 106 Idaho 194, 677 P.2d 507 (Ct. App. 1984).

In some circumstances, part performance may establish an equitable ground to avoid the strictures of the statute of frauds. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

Even if an indemnity contract is a surety agreement as contemplated by this section, part performance of an unwritten agreement will satisfy the

statute of frauds. Essex Crane Rental Corp. v. Weyher/Livsey Constructors, Inc., 713 F. Supp. 1350 (D. Idaho 1989), rev'd on other grounds, 940 F.2d 1253 (9th Cir. 1991).

Employment Contract.

Where oral contract of employment was to continue for a period of seven years from Dec. 1, 1959, the fact that employee was working under such agreement from Oct. 24, 1959, until his arrest by his employer on Dec. 11, 1959, and as an added part performance of such contract had moved his family to the place of his employment, would not validate the agreement, which by its terms was not to be performed within one year and was not in writing. Allen v. Moyle, 84 Idaho 18, 367 P.2d 579 (1961).

Where labor union agreement failed to mention the duration period to discuss terms of payment and to denote the parties, the agreement was not a memorandum or writing embodying the oral agreement and, therefore, it was irrelevant to the oral contract under which plaintiff claimed damages. Remlinger v. Dravo Corp., 94 Idaho 292, 486 P.2d 1005 (1971).

If, under an oral employment contract, the employee was hired for a fixed period coterminous with the 30-year lease on the plant site, then the fixed period would place his employment contract squarely within the statute of frauds. Whitlock v. Haney Seed Co., 110 Idaho 347, 715 P.2d 1017 (Ct. App. 1986).

Where the oral employment agreement contained both a condition, satisfactory performance by the employee, and a contingency, any extrinsic event such as change in company ownership, cessation of plant operations, or expiration of the plant lease, the contract did not fall within the statute of frauds because of the contingency, even if satisfactory performance is not a type of condition which obviates the statute of frauds. Whitlock v. Haney Seed Co., 110 Idaho 347, 715 P.2d 1017 (Ct. App. 1986).

The statute of frauds barred enforcement of the noncompetition clause because plaintiff never signed the proposed employment contract, and the evidence was insufficient to demonstrate equitable estoppel, or that defendant admitted the contract. Treasure Valley Gastroenterology Specialists, P.A. v. Woods, 135 Idaho 485, 20 P.3d 21 (Ct. App. 2001).

Equitable Estoppel.

Performance in reliance upon an oral promise must be explainable only by existence of the promise to prove estoppel in a statute of frauds action. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

The doctrine of full performance by one party, like the doctrine of part performance, does not take the contract out of the statute of frauds; rather, it should be treated as a form of equitable estoppel. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

The elements of equitable estoppel may be satisfied in a statute of frauds case when one party orally has made a false promise and the promisee has relied specifically upon it, changing position to his detriment. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

Evidence and Pleading.

This section is a substantive law dealing with contracts affecting personal property and commercial transactions. It deals with the origin and basis of a cause of action, and the rule of evidence that it embodies is only an incident to remedy under the statute. Kerr v. Finch, 25 Idaho 32, 135 P. 1165 (1913); Seder v. Grand Lodge, A.O.U.W., 35 Idaho 277, 206 P. 1052 (1922).

Where it appears on the face of the complaint that the contract sued on is within the statute, it need not be set up in the answer. Magee v. Winn, 52 Idaho 553, 16 P.2d 1062 (1932).

A contract falling within the statute of frauds is not void but voidable and a complaint which alleges a contract generally is sufficient. Slusser v. Aumock, 56 Idaho 793, 59 P.2d 723 (1936).

In an action for four months' rent on a building, the complaint was not demurrable on the ground that the rental agreement was not alleged to be in writing, where there was nothing in the complaint to indicate that the agreement was for a renting of a building for more than from month to month. Winter v. Bens, 62 Idaho 250, 109 P.2d 890 (1941).

Exchange of Real Property.

Where plat was not signed by both parties and the signed exchange agreement did not expressly refer to it, the plat cannot be used to provide the required legal description and, thus, the exchange agreement failed for

lack of sufficient legal description. Scott v. Castle, 104 Idaho 719, 662 P.2d 1163 (Ct. App. 1983).

Execution Required by Both Parties.

Where consideration of such contracts consists of mutual promises of each, the memorandum must be signed by both parties, and it must be complete in all essentials and leave nothing to parol. Houser v. Hobart, 22 Idaho 735, 127 P. 997 (1912).

Contract within the purview of this section, executed as required by law by one party but not by the other, is invalid and can not be enforced by either party at any time. Kerr v. Finch, 25 Idaho 32, 135 P. 1165 (1913).

That defendant signed unperformed agreement for work by plaintiff on mining claims did not take agreement out of statute, it being void for want of mutuality. Rouker v. Richardson, 49 Idaho 337, 288 P. 167 (1930).

An agreement for the extension of a real estate mortgage executed by the mortgagor's grantee and forwarded to the mortgagee's home office and returned to its agent who caused it to be recorded was not subject to the objections that it lacked mutuality and was not executed by the mortgagee as required by the statute of frauds, since the acceptance and recording of the agreement, at the mortgagee's instance, although not completed until some two months after the execution by the mortgagor's grantee, rendered the agreement binding on the mortgagee, particularly where both parties treated the instrument as a consummated extension agreement, payments being thereafter made and received in accordance with its terms. Union Cent. Life Ins. Co. v. Nielson, 62 Idaho 483, 114 P.2d 252 (1941).

This section requires both parties to a bilateral oral contract to sign the memorandum supporting the oral agreement. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

The signature of both parties is required only where the agreement is bilateral. Hunt v. Hunt, 110 Idaho 649, 718 P.2d 560 (Ct. App. 1985).

Where both parties to real estate purchase and sale agreement mutually acknowledge the existence of their agreement with respect to the purchase of the property, such agreement was not invalid under the statute of frauds for lack of seller's signature. Kelly v. Hodges, 119 Idaho 872, 811 P.2d 48 (Ct. App. 1991).

Failure to Comply.

Failure to comply with the statute of frauds renders an oral agreement unenforceable both in an action at law for damages and in a suit in equity for specific performance. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Failure to comply with subdivision 5 renders an oral agreement transferring an interest in real property unenforceable both in law and in equity. Bob Daniels & Sons v. Weaver, 106 Idaho 535, 681 P.2d 1010 (Ct. App. 1984).

Installment Sale.

Where buyer of real property sent to seller a letter which declared purchase price, percentage down payment and interest rate, but did not indicate the maturity date of the note, the beginning date of the installment payments, the amount of installment payments, or whether and how the note was secured, the letter was not sufficient to take the parties' oral agreement out of the statute of frauds. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Where the parties to an oral agreement to sell real estate intend deferred payments, the terms and conditions of the credit transaction must be set forth in the memorandum in order to satisfy the statute of frauds. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Oral Agreement.

Oral agreement to build and maintain partition fences is not a contract for sale or lease of realty. Tsuboi v. Cohn, 40 Idaho 102, 231 P. 708 (1924).

Oral agreements to build and maintain partition fences are binding upon parties and their privies when recognized and acted upon. Tsuboi v. Cohn, 40 Idaho 102, 231 P. 708 (1924).

Oral agreement of plaintiff to purchase house being constructed on defendant's property was not enforceable where deed, though placed with bank, was under control of defendant, and material elements of the agreement were not agreed upon, so that plaintiff was entitled to recover for material and labor furnished as a down payment contingent on plaintiff securing a loan for the balance, since contract was not completed and

remained in the stage of negotiations. Raff v. Baird, 76 Idaho 422, 283 P.2d 927 (1955).

Where plaintiff, in suit to quiet title, was not relying on an oral contract for the conveyance of real property but was holder of legal title the defense of the statute of frauds was not established. Dickerson v. Brewster, 88 Idaho 330, 399 P.2d 407 (1965).

If husband and wife orally contracted to make and did make irrevocable mutual and reciprocal wills, and husband died without changing his will, contract would be enforceable in equity at wife's death, notwithstanding it would transfer an interest in real property. Collord v. Cooley, 92 Idaho 789, 451 P.2d 535 (1969).

Where oral agreement was made for purchase of real property, which was confirmed by buyer's letter to seller accompanied by a $5,000 deposit check which seller placed in escrow, and where buyer executed a deed of trust, a deed of trust note, a seller's closing statement, a lot sale agreement and other loan documents, none of which were signed by the seller, the oral agreement was unenforceable under the statute of frauds since the deposit check, which was the only writing signed by both parties, did not set out the terms of the agreement and could not be supplemented by the buyer's letter because it made no reference to such letter. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

An oral agreement by employer to buy property for the amount of employee's equity, if the property was not sold within nine months after employee moved to his new assignment was unenforceable under subdivision 5. IBM Corp. v. Lawhorn, 106 Idaho 194, 677 P.2d 507 (Ct. App. 1984).

An oral agreement to substitute the mode or time of performance of an executory contract required to be in writing is valid and binding, provided that no other material term is changed and the agreement is made before the expiration of the written contract. Kelly v. Hodges, 119 Idaho 872, 811 P.2d 48 (Ct. App. 1991).

For a valid gift of real property, there must be a "conveyance or other instrument in writing" subscribed by the party to be charged. If made by an agent of the party to be charged, such authority must also be in writing.

Although no particular instrument is necessary to constitute a note or memorandum required by the statute of frauds, the essential terms of an oral gift must be contained in the writing or writings. Erb v. Kohnke, 121 Idaho 328, 824 P.2d 903 (Ct. App. 1992).

In a matter involving an appeal from a failed venture to develop a Christian retreat ranch, an oral contract existed, but there was no violation of the statute of frauds as the oral contract was for the formation of a partnership for the purpose of developing a Christian retreat ranch, not an oral contract for the sale of land, which transaction was incidental to the oral contract. Spence v. Howell, 126 Idaho 763, 890 P.2d 714 (1995).

The plain language of subsection 5 does not mandate that all terms of a loan agreement and associated security arrangements be in writing; therefore, the oral agreement to lengthen plaintiff's time for performance under the promissory note and to modify defendant's collection rights under the security agreements did not alter defendant's promise to lend money and were not subject to the statute of frauds. Rule Sales & Serv., Inc. v. U.S. Bank Nat'l Ass'n, 133 Idaho 669, 991 P.2d 857 (Ct. App. 1999).

This section barred a breach of contract claim because, assuming that there was in fact a pre-commitment to loan money and that the bank agreed to take a second position on an eighty-acre parcel, no one claimed that such an agreement was in writing. Bank of Commerce v. Jefferson Enters., LLC, 154 Idaho 824, 303 P.3d 183 (2013).

Oral Modification.

A verbal agreement entered into to lease a room made in return for a written lease of another room, being intended for a period longer than one year, was invalid due to the application of the statute of frauds. Bennett v. Richards, 80 Idaho 140, 326 P.2d 986 (1958).

Oral modification of bank's letter of guarantee would be barred under the statute of frauds. USA Fertilizer, Inc. v. Idaho First Nat'l Bank, 120 Idaho 271, 815 P.2d 469 (Ct. App. 1991).

Parol Proof Inadmissible.

To render oral contract that falls within the statute of frauds enforceable by action, the memorandum thereof must state contract with such certainty that its essentials can be known from memorandum itself, or by a reference

contained in it to some other writing, without recourse to parol proof to supply them. Blumauer-Frank Drug Co. v. Young, 30 Idaho 501, 167 P. 21 (1917).

If a boundary line is not disputed, indefinite or uncertain, a parol agreement changing its location is within the statute of frauds and is void. Kunkle v. Clinkingbeard, 66 Idaho 493, 162 P.2d 892 (1945).

Despite livestock owner's contention to the contrary, alleged oral agreement between the livestock owner and a bank regarding financing did not satisfy the statute of frauds, and commitment letters could not provide evidence of a writing when they were never executed; there was no applicable exception to the statute of frauds, and the doctrines of part performance, equitable estoppel and promissory estoppel did not apply. Lettunich v. Key Bank Nat'l Ass'n, 141 Idaho 362, 109 P.3d 1104 (2005).

Part Performance.

"Part" performance means performance by either or both parties of less than all their respective obligations under the contract. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

Doctrine of part performance was not applicable where lease did not implicate the statute of frauds. Lawrence v. Jones, 124 Idaho 748, 864 P.2d 194 (Ct. App. 1993).

As a consequence of §§ 9-503, 9-504 and this section, where alleged part performance can be explained as consistent with some other purpose or arrangement, an oral contract to sell will not be established; therefore, where evidence indicated tenants/alleged purchasers did not take any action regarding the premises other than moving in and operating the bakery, made monthly payments consistent with rental, and made no valuable improvements to premises with repairs being made by landlord/alleged vendors, no clear and convincing evidence existed to support existence of an oral contract to sell. Hinkle v. Winey, 126 Idaho 993, 895 P.2d 594 (Ct. App. 1995).

Performance Within One Year.

Contract whereby corporation agrees to employ a man at a specified salary so long as he continues to own and hold his stock in the corporation does not come within purview of the statute of frauds on ground that the

same was not in writing, for the reason that such contract is capable of being fully performed, completed, and terminated within a year. Darknell v. Coeur d'Alene & St. Joe Transp. Co., 18 Idaho 61, 108 P. 536 (1910).

First subdivision of this section will not prevent recovery of an agreed and stipulated price contracted to be paid for services and labor which have been rendered by employee during a period exceeding one year, simply because contract was not reduced to writing. Darknell v. Coeur d'Alene & St. Joe Transp. Co., 18 Idaho 61, 108 P. 536 (1910).

Written contracts not containing the main features of oral contracts which they were intended to replace do not take the oral contracts out of the statute of frauds. Welch v. Bigger, 24 Idaho 169, 133 P. 381 (1913).

Where termination of contract is dependent upon the happening of a contingency which may occur within a year, although it may not happen until after expiration of a year, contract is not within the statute of frauds. Seder v. Grand Lodge, A.O.U.W., 35 Idaho 277, 206 P. 1052 (1922); Hubbard v. Ball, 59 Idaho 78, 81 P.2d 73 (1938).

A contract which by its terms is not to be performed within a year from the making thereof is not taken out of the statute of frauds by reservation of an option to cancel the same by one or both parties within a year. Seder v. Grand Lodge, A.O.U.W., 35 Idaho 277, 206 P. 1052 (1922).

Continuous employment for continuous service is valid if termination be dependent on contingency which may occur within a year. Hubbard v. Ball, 59 Idaho 78, 81 P.2d 73 (1938).

Where plaintiff's answers to interrogatories contemplated the endurance of alleged contract for four or five years and in his affidavit for summary judgment it was his opinion that the terms of the contract could and might be completed within one year, the answers and opinion were conflicting and thus did not comply with the provisions of Idaho R. Civ. P. 56(e) to render it admissible in showing a genuine issue of material fact, that the contract could be performed within one year from making thereof, so as to take that oral contract out of statute of frauds. Remlinger v. Dravo Corp., 94 Idaho 292, 486 P.2d 1005 (1971).

Even if a contract appears on its face to anticipate performance for more than one year, it may fall outside this section if it is subject to a condition or

contingency that could occur within a year, terminating further performance. Whitlock v. Haney Seed Co., 110 Idaho 347, 715 P.2d 1017 (Ct. App. 1986).

Where an alleged oral contract of employment could not be performed within 1 year, the trial court should have instructed the jury on the statute of frauds defense. Burton v. Atomic Workers Fed. Credit Union, 119 Idaho 17, 803 P.2d 518 (1990).

Where an oral contract was subject to several contingencies, all of which could have occurred within one year, the statute of frauds did not bar enforcement of the contract. General Auto Parts Co. v. Genuine Parts Co., 132 Idaho 849, 979 P.2d 1207 (1999).

District court erred in holding that an alleged oral contract for long-term employment fell within the statute of frauds where the employee alleged that the term of the contract was until his retirement, and the employee could have retired within one year. Mackay v. Four Rivers Packing Co., 145 Idaho 408, 179 P.3d 1064 (2008).

Parents of debtors who declared Chapter 7 bankruptcy were not precluded under this section from filing a claim against the debtors' bankruptcy estate, seeking payment of a loan they made to the debtors so the children could purchase a house. Even though the parties to the loan did not create a writing which outlined the terms of the loan, this section allows the use of verbal contracts that can be performed in less than a year, and both the parents and the debtors believed that the loan would be repaid in less than a year. In re Lacey, 2014 Bankr. LEXIS 598 (Bankr. D. Idaho Feb. 13, 2014).

Purpose.

The object of the statute of frauds is to prevent potential fraud by forbidding disputed assertions of enumerated kinds of contracts without any written basis. Frantz v. Parke, 111 Idaho 1005, 729 P.2d 1068 (Ct. App. 1986).

The apparent purpose of this section is to protect banks and other businesses from claims that they made an oral commitment to lend money or to grant credit and breached such commitment by failing to deliver the funds. Once the loan funds have been delivered to the borrower, so there is

no longer an executory promise to make a loan, this section, by its plain language, has no further application. Rule Sales & Serv., Inc. v. U.S. Bank Nat'l Ass'n, 133 Idaho 669, 991 P.2d 857 (Ct. App. 1999).

Ratification.

Invalid ratification of an agreement that was unenforceable under this section because of the lack of prior written authorization for the original agent who signed the agreement did not prevent later valid ratification of the agreement by a principal under this section, where the ratification occurred before the prospective purchaser decided to decline the purchase. Graham Capital Corp. v. Simpson, 126 Idaho 749, 890 P.2d 335 (1995).

Real Estate Contract.

Because the real property contract was subject to the statute of frauds, gaps in essential terms regarding the security agreement could not be filled by parol evidence. Lawrence v. Jones, 124 Idaho 748, 864 P.2d 194 (Ct. App. 1993).

Although a real estate contract need not contain a security provision if none is contemplated, once parties attempt to provide for security, it becomes an essential term of the contract. Lawrence v. Jones, 124 Idaho 748, 864 P.2d 194 (Ct. App. 1993).

Where the real estate agreement between the parties was unenforceable for noncompliance with the statute of frauds, the developer could not enforce that part of the agreement regarding arbitration. Lexington Heights Dev., LLC v. Crandlemire, 140 Idaho 276, 92 P.3d 526 (2004).

Legal description in the parties' real estate agreement did not contain a sufficient description of the property to be sold because it did not contain any description sufficient to identify the approximate five-acre parcel that was to be excluded from the sale; the agreement was invalid regardless of whether the parties did or could have agreed upon the boundaries of the excluded property and the landowners could have then obtained a survey of the property and the agreement did not reference as the boundaries of the excluded parcel any structure or landmark that could be then identified by parol evidence. Lexington Heights Dev., LLC v. Crandlemire, 140 Idaho 276, 92 P.3d 526 (2004).

Lock-in agreement regarding a certain interest rate for a home refinancing did not constitute a commitment to lend that violated the statute of frauds; moreover, the question was whether the agreement was an enforceable contract. Bajrektarevic v. Lighthouse Home Loans, Inc., 143 Idaho 890, 155 P.3d 691 (2007).

Trial court erred in finding that statute of frauds was satisfied in a contract dispute for the sale of real property because the property description within the contract was insufficient. Ray v. Frasure, 146 Idaho 625, 200 P.3d 1174 (2009).

Where a real estate development agreement provided the existing legal description of the entire property and identified a specific amount of completed lots that were to be developed and sold by the debtor to the other contracting party within each portion of the parcel, the agreement contained a sufficient description of the property to satisfy this section. Gugino v. Kastera, LLC (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

To satisfy the statute of frauds, not only must an agreement for the sale of real property be in writing and subscribed by the party to be charged, but the writing must also contain an adequate description of the property, either in terms or by reference, so that the property can be identified without resort to parol evidence. Gugino v. Kastera, LLC (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

A property description in a real estate sales contract that consisted solely of a physical address did not satisfy the statute of frauds. In re McMurdie, 448 B.R. 826 (Bankr. D. Idaho 2010).

Sales and Leases of Realty.

Receipt or memorandum reading, "Lowe, Idaho, March 7, 1902. Received from S. C. Kurdy, one hundred and ninety dollars on land, Sec. 25, Ts. 32 R. 2 E. 160 acres," signed by the parties sought to be charged, is insufficient upon which to enforce specific performance. Kurdy v. Rogers, 10 Idaho 416, 79 P. 195 (1904).

Mere giving of a check as earnest money is not sufficient evidence of the purchase of real property. Schulz v. Hansing, 36 Idaho 121, 209 P. 727 (1922).

Purported lease, not being definite and certain and not being complete within itself as to all essentials of lease of real property for term of more than one year, so that there is nothing left to be established by parol, does not satisfy requirements of this section. Gaskill v. Jacobs, 38 Idaho 795, 225 P. 499 (1924).

Assignee of mortgagee, knowing that mortgagee had agreed that mortgage should be valid only if sale was not consummated and had taken an assignment of deposit of the purchase-price, could not assert that contract of sale was made by agent without written authority. Corbett v. Vette, 9 F.2d 773 (9th Cir.), cert. denied, 271 U.S. 663, 46 S. Ct. 475, 70 L. Ed. 1139 (1926).

Where strip of land was attempted to be sold orally, contrary to the provisions of this section, the subsequent quiet title action by the purchaser's successor in title failed in the absence of a showing of any uncertainty or misunderstanding as to the true boundary. Balmer v. Pollak, 67 Idaho 494, 186 P.2d 217 (1947).

The instrument of "formal written contract" to which appellants refer is appended to and made a part of the amended complaint: it is in the form of a contract for the sale and purchase of real property, but it cannot be regarded as a contract, since it is not subscribed by respondents, the parties sought to be charged, and since appellants admit the insufficiency of the memorandum, standing alone, as a contract for the sale and purchase of real property, the statute of frauds defeats appellants' contention. Moen v. Minzel, 79 Idaho 228, 313 P.2d 1079 (1957).

The complaint sufficiently stated a cause of action where former realty owners against whom mortgage had been foreclosed alleged an agreement had been entered into with junior lienholder that latter was to redeem property on last day of redemptive period and that former owners were then to secure a purchaser for such realty and personal property located thereon, they to be compensated for such services by the grant of certain parcels of land, but buyer and junior lienholder in violation of such oral agreement consummated the sale depriving former owners of agreed compensation. Harvey v. Brown, 80 Idaho 379, 330 P.2d 982 (1958).

Proof of an oral lease as defense against claim to land on basis of adverse possession was not barred by this section because the lease in question was

terminable at will and had been executed prior to bringing the action. Aldape v. State, 98 Idaho 912, 575 P.2d 891 (1978).

Where the record indicated that counsel for the plaintiff renters had conceded in argument before the trial court that the renters did not have a sales contract with the defendant owners of the property, the trial court properly denied plaintiffs' motion to amend their claim in order to prove an oral agreement for sale of the property since the evidence supported the trial court's finding that the parties, in fact, reached no meeting of the minds. Haskin v. Glass, 102 Idaho 785, 640 P.2d 1186 (Ct. App. 1982).

Where neither the attorney's letter to purchaser concerning land transaction nor the warranty deed were referred to in the check from purchaser to seller which was the only writing signed by both parties to the transaction, the documents were not sufficient to take the transaction out of the statute of frauds. Hemingway v. Gruener, 106 Idaho 422, 679 P.2d 1140 (1984).

Failure of parties who entered into agreement for real estate purchase to reach agreement initially as to payment date was not fatal to their contract for the date was subsequently fixed and the date and amount due were set out in writing in letters to the purchasers and the closing agent, and a deed signed and acknowledged was sent to the closing agent. Crittenden v. Crane, 107 Idaho 213, 687 P.2d 996 (Ct. App. 1984).

Where real estate agreement was expressed in a written contract, as later supplemented by written correspondence, and contained all the essential terms and conditions, as a matter of law, it did not violate the statute of frauds; therefore, seller was liable in damages for breach of the contract when he refused to convey the property to the purchaser on the date set for closing. Crittenden v. Crane, 107 Idaho 213, 687 P.2d 996 (Ct. App. 1984).

Sales of Goods.

Where none of the requirements of this section are complied with at the time sale is made, the contract can only be enforced against purchaser if he afterwards receives and accepts the goods; but in case he does afterwards so receive and accept them, the contract becomes executed and the statute has no application. Coffin v. Bradbury, 3 Idaho 770, 35 P. 715 (1894).

Where evidence is conflicting, question of what constitutes such a receipt and acceptance of the goods, as to take contract out of the statute, is a question for jury. Coffin v. Bradbury, 3 Idaho 770, 35 P. 715 (1894).

Where seller orders goods for buyer from third person according to specifications furnished by latter, and the goods are shipped by third person and stored in a warehouse for buyer, who, on being informed of the fact, makes a payment on the purchase-price and states that he will remove goods in a few days, transaction is not a sale from seller to buyer within provisions of this section, but seller is rather an agent for buyer. C.R. Shaw Lumber Co. v. Manville, 4 Idaho 369, 39 P. 559 (1895).

Where W sues F and procures an attachment, and F by way of cross-complaint claims damages against A, resulting from the wrongful issuance of attachment, and orally assigns to C, for a consideration already paid, any judgment that he may recover on his cross-complaint, such assignment is not within the statute of frauds. McCornick v. Friedman, 9 Idaho 754, 76 P. 762 (1904).

Where essential part of a contract for sale of mining stock for more than $200.00 rests in parol, and there has been no delivery of any part of property and no payment of any part of purchase-price, such contract is void. Snow Storm Mining Co. v. Johnson, 186 F. 745 (9th Cir. 1911).

Act of buyer of goods under a contract in offering to sell goods which he has contracted to purchase is such an act as constitutes an acceptance of the goods so as to take contract out of the operation of the statute. Bicknell v. Owyhee Sheep & Land Co., 31 Idaho 696, 176 P. 782 (1918).

Settlement Agreement.

A stipulation to settle litigation whose subject matter is within the statute of frauds must be in writing and signed by the parties to be charged; thus, when the subject matter of the stipulation falls within the proscription of the statute of frauds, and the agreement is oral and executory, it is unenforceable. Olson v. Idaho Dep't of Water Resources, 105 Idaho 98, 666 P.2d 188 (1983).

Signing of Memorandum.

Although it is not necessary that the memorandum evidencing an oral agreement be signed with the intent to comply with the statute of frauds, the

signature must be made with the declared or apparent intent of authenticating the writing relied upon as a memorandum. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Unsigned Writings.

Idaho follows the doctrine that an unsigned writing may be considered as part of a memorandum supporting an oral agreement only where express reference to it is made in a signed writing. Hoffman v. SV Co., 102 Idaho 187, 628 P.2d 218 (1981).

Although an agreement for the sale of real property was reduced to writing several times, it never was signed by the party to be charged and, consequently, there was no enforceable agreement. Wolske Bros. v. Hudspeth Sawmill Co., 116 Idaho 714, 779 P.2d 28 (Ct. App. 1989).

Where written documents, unsigned by mortgagee, did not match the loan amount and interest rate that mortgagee believed that bank had promised, there was no meeting of the minds and, thus, no contract to be enforced between the parties. Countrywide Home Loans, Inc. v. Sheets, 160 Idaho 268, 371 P.3d 322 (2016).

Waiver of Defense.

The defense of the statute of frauds is waived where it does not appear from the complaint that the contract sued on does not fall within it, and the party relying on the statute as a defense fails to plead it. Slusser v. Aumock, 56 Idaho 793, 59 P.2d 723 (1936); Magee v. Winn, 52 Idaho 553, 16 P.2d 1062 (1932).

Even though it would have been a better practice for the plaintiff lessee to have raised the affirmative defense of the statute of frauds in her reply to the defendant lessor's counterclaim or to have requested an amendment, where the defendant knew of the affirmative defense and was given time to present argument in opposition to the defense, the plaintiff did not waive her right to raise the statute of frauds defense by first raising it in a summary judgment motion. Bluestone v. Mathewson, 103 Idaho 453, 649 P.2d 1209 (1982).

Failure to plead the defense of the statute of frauds in the amended answer acts as a waiver of the defense and all objections based on it; therefore, defendant's failure to first present the statute of frauds issue to the

trial court for resolution precludes consideration of the question on appeal. Ernst v. Hemenway & Moser Co., 120 Idaho 941, 821 P.2d 996 (Ct. App. 1991), modified, 126 Idaho 980, 895 P.2d 581 (1995).

Water Rights.

A water right is defined, not in terms of metes and bounds as in other real property, but in terms of the priority, amount, season of use, purpose of use, point of diversion, and place of use and a compromise, in a stipulation to settle a water rights dispute, to change or exchange any of these definitional factors would be identical to a compromise to change or exchange a portion of the metes and bounds description of real property and, as such, would fall directly within the statute of frauds. Olson v. Idaho Dep't of Water Resources, 105 Idaho 98, 666 P.2d 188 (1983).

Where oral stipulation to settle water rights dispute changed existing water rights by reshuffling priority dates and changing amounts of use, such stipulation was a contract falling within the statute of frauds and, if still executory, was unenforceable. Olson v. Idaho Dep't of Water Resources, 105 Idaho 98, 666 P.2d 188 (1983).

Written Authority.

District court erred in granting summary judgment to the prospective purchasers of lot on the basis that the sale agreement was unenforceable because the seller's original agent did not have written authority to sign the agreement as required by subdivision 5 of this section prior to the signing, because, although there was not an express ratification of the agreement before the prospective purchasers declined the purchase, the agreement was enforceable as the closing documents were signed by the president and the secretary acting as valid agents of the seller before the purchaser declined to purchase the property. Graham Capital Corp. v. Simpson, 126 Idaho 749, 890 P.2d 335 (1995).

Cited Sears v. Flodstrom, 5 Idaho 314, 49 P. 11 (1897); Castleberry v. Hay, 8 Idaho 670, 70 P. 1055 (1902); Valley Lumber Co. v. McGilvery, 16 Idaho 338, 101 P. 94 (1908); Hull v. Cartin, 61 Idaho 578, 105 P.2d 196 (1940); Abbl v. Morrison, 64 Idaho 489, 134 P.2d 94 (1943); Chatterton v. Luker, 66 Idaho 242, 158 P.2d 809 (1945); Crouch v. Bishoff, 76 Idaho 216, 280 P.2d 419 (1955); Dalby v. Kennedy, 94 Idaho 72, 481 P.2d 30 (1971);

Tandy & Wood, Inc. v. Munnell, 97 Idaho 142, 540 P.2d 804 (1975); First Interstate Bank v. West, 107 Idaho 851, 693 P.2d 1053 (1984); Katseanes v. Yamagata, 109 Idaho 702, 710 P.2d 612 (Ct. App. 1985); Old Stone Capital Corp. v. John Hoene Implement Corp., 647 F. Supp. 916 (D. Idaho 1986); Baker v. Kulczyk, 112 Idaho 417, 732 P.2d 386 (Ct. App. 1987); Karterman v. Jameson, 132 Idaho 910, 980 P.2d 574 (Ct. App. 1999); P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust, 144 Idaho 233, 159 P.3d 870 (2007); Apple's Mobile Catering, LLC v. O'Dell, 149 Idaho 211, 233 P.3d 142 (2010); Wash. Fed. Sav. v. Van Engelen, 153 Idaho 648, 289 P.3d 50 (2012); David & Marvel Benton v. McCarty, 161 Idaho 145, 384 P.3d 392 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, Statute of Frauds, § 1 et seq.

C.J.S. — 37 C.J.S., Statute of Frauds, § 1 et seq.

ALR. — Fixtures, parol exception of, from lease. 29 A.L.R.3d 1441.

Sufficiency of description of terms and conditions of lease, or lease provision, so as to comply with statute of frauds. 12 A.L.R.6th 123.

Idaho Code § 9-506

§ 9-506. Original obligations — Writing not needed. — A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligations in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety.

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is, or may become, liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration and in connection with such transfer, enters into a promise respecting such instrument.

History.

C.C.P. 1881, § 938; R.S., R.C., & C.L., § 6010; C.S., § 7977; I.C.A., § 16-506.

CASE NOTES

Antecedent obligation of another.

Collateral agreements.

Function of trial court.

New obligation.

Original agreements.

Question of fact.

Antecedent Obligation of Another.

Because an employer's promise to answer for a newly hired employee's loan obligation to her previous employer directly benefitted the new employer, the agreement is an exception to the statute of frauds requirement of written evidence. Campbell v. Parkway Surgery Ctr., LLC, 158 Idaho 957, 354 P.3d 1172 (2014).

Collateral Agreements.

If consideration of party's promise is for money to be furnished or received by third person, such promise is collateral, where the transaction is such that third person remains answerable to person who furnishes him with such money; such promise will not, therefore, bind party unless it is in writing. Storer v. Heitfeld, 19 Idaho 170, 113 P. 80 (1910).

There is no consideration moving to stockholder as individual to sustain his promise that, if creditors of corporation would accept less than their claims, such stockholder would pay them. Reed v. Samuels, 43 Idaho 55, 249 P. 893 (1926).

Agreement to pay for material or services furnished independent contractor is promise to answer for debt, default, or miscarriage of another and is within the statute. McQuade v. Edward Rutledge Timber Co., 46 Idaho 471, 268 P. 570 (1928).

The transaction in question was taken out of the statute of frauds because it had been partially executed by the transfer of the property to the defendant by two of the debtors, where, when judgment became a lien upon the land two of the three judgment debtors sold to the purchaser, the purchaser while failing to do so having orally agreed to pay the judgment,

the creditor thereupon levying upon sums of such third debtor to satisfy the judgment. Jones v. Better Homes, Inc., 79 Idaho 294, 316 P.2d 256 (1957).

Section 9-505 generally requires a written promise; however, an exception exists when the promise is original or independent from, and not merely collateral to, the agreement between the promisee and the third-party debtor since an original obligation of the promisor is not covered by the terms of the statute of frauds. Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co., 115 Idaho 373, 766 P.2d 1254 (Ct. App. 1988).

Function of Trial Court.

The trial judge is the arbiter of whether the evidence indicating an original obligation is sufficient to allow the statute of frauds question to go to the jury. Beaupre v. Kingen, 109 Idaho 610, 710 P.2d 520 (1985).

New Obligation.

Where conversation between bank and fertilizer company concerning payment for fertilizer sold to farmer did not result in an agreement, either written or oral, that bank would guarantee payment of farmer's account beyond the initial fertilizer application, and where president of fertilizer company conceded that bank official never specifically stated that the guarantee was open-ended, and a bank official denied ever making such a representation, district court finding that the conversation did not constitute a new obligation expressly exempted from the statute of frauds was not clearly erroneous. USA Fertilizer, Inc. v. Idaho First Nat'l Bank, 120 Idaho 271, 815 P.2d 469 (Ct. App. 1991).

Original Agreements.

Agreement by one who has the property of debtor in his possession to sell and apply proceeds in payment of debt is within this section. Smith v. Caldwell, 6 Idaho 436, 55 P. 1065 (1899).

Where D works for R, and on settlement of his work R agrees to pay C and S, to whom D is indebted, the debt thus assumed becomes debt of R and is not within the statute of frauds. Sherer v. Rubedew, 11 Idaho 536, 83 P. 512 (1905).

Under subdivision 3, promise to answer for the obligation of another is deemed an original obligation of promisor and need not be in writing,

where promise is for an antecedent obligation of another and is made upon the consideration that party receiving it cancels the antecedent obligation and accepts the new promise as a substitute therefor. McCallum v. McClarren, 15 Idaho 374, 98 P. 200 (1908).

Where one corporation has purchased all the property and rights of another corporation, and, as a part of the consideration for such purchase and transfer, purchaser has agreed to assume and pay outstanding debts and liabilities of old corporation, such transaction constitutes liability of the new company to pay such indebtedness and original obligation, which is not required to be in writing under the statute of frauds. Mineau v. Imperial Dredge & Exploration Co., 19 Idaho 458, 114 P. 23 (1911).

While evidence to answer for debt or default of another must be in writing, no such rule obtains where party treats debt as his own. Kelly v. Arave, 41 Idaho 723, 243 P. 366 (1925).

Promise to pay rent in consideration of party foregoing action and attachment against tenant is original obligation on consideration, beneficial to party promising. Sullivan v. Idaho Whsle. Co., 43 Idaho 149, 249 P. 895 (1926).

A shareholder of a corporation who, upon dissolution of the corporation, took assets of the corporation along with obligations of the corporation, and who subsequently told a creditor of the corporation that he would pay the original corporate account, became obligated to pay that account as an original obligation under this section. Dalby v. Kennedy, 94 Idaho 72, 481 P.2d 30 (1971).

Where the shareholders of a corporation had mutually agreed to pay attorney's fees, such agreement was made separately and remotely from earlier written promises to guarantee the obligations of the corporation, and the defense of the lawsuits in question was for the benefit of the shareholders in their personal capacities, the oral agreement that obligated each shareholder to pay one-third of the attorney's fees incurred for the defense of lawsuits against the corporation was an original one under this section, rather than a collateral agreement within the terms of § 9-505(2). Therefore, the statute of frauds did not bar plaintiff shareholder's claim for reimbursement of money expended for attorney's fees. Beaupre v. Kingen, 109 Idaho 610, 710 P.2d 520 (1985).

The promise to pay the debt of another is an original promise. M.T. Deaton & Co. v. Leibrock, 114 Idaho 614, 759 P.2d 905 (Ct. App. 1988).

Question of Fact.

Whether an oral promise constitutes a collateral or an original obligation, for the purposes of the statute of frauds, is generally a question for the finder of fact. Beaupre v. Kingen, 109 Idaho 610, 710 P.2d 520 (1985).

Cited Johnson Cattle Co. v. Idaho First Nat'l Bank, 110 Idaho 604, 716 P.2d 1376 (Ct. App. 1986); Mickelsen Constr., Inc. v. Horrocks, 154 Idaho 396, 299 P.3d 203 (2013).

§ 9-507. Representations of credit to be in writing. — No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by, or in the handwriting of, the party to be charged.

History.

C.C.P. 1881, § 939; R.S., R.C., & C.L., § 6011; C.S., § 7978; I.C.A., § 16-507.

CASE NOTES

Application of Section.

Commission agreement in compliance with terms of statute is necessary to warrant recovery, notwithstanding sale is made by owner to purchaser furnished by complainant. Laker Land & Loans v. Nye, 40 Idaho 793, 237 P. 630 (1925), overruled on other grounds, Central Idaho Agency, Inc. v. Turner, 92 Idaho 306, 442 P.2d 442 (1968).

This section is not applicable to oral representations in violation of fiduciary relationship. Jenkins v. Standrod, 46 Idaho 614, 269 P. 586 (1928).

§ 9-508. Real estate commission contracts to be in writing. — No contract for the payment of any sum of money or thing of value, as and for a commission or reward for the finding or procuring by one person of a purchaser of real estate of another shall be valid unless the same shall be in writing, signed by the owner of such real estate, or his legal, appointed and duly qualified representative.

History.

1915, ch. 131, § 1, p. 287; compiled and reen. C.L., § 6012; C.S., § 7979; I.C.A., § 16-508.

STATUTORY NOTES

Cross References.

Licensing of real estate brokers, § 54-2021 et seq.

CASE NOTES

Acknowledgment of services.

Application in general.

Brokerage commission.

Co-owners of property.

Description of property.

Pleading.

Statute of frauds.

Verbal agreements.

Acknowledgment of Services.

A written acknowledgment of broker's services and promise to pay therefor, being unrelated to the oral promise to pay for such services when yet to be performed, was sufficient to satisfy the requirements of the statute of frauds or this section, such written instrument being presumptive

evidence of a valid consideration and the burden would rest on appellants to avoid such instrument. Homefinders v. Lawrence, 80 Idaho 543, 335 P.2d 893 (1959).

The requirements of this section are not satisfied by an acknowledgment in a contract of sale that the sellers employed the real estate agent and would pay any fee to which he might be entitled and hold the buyers harmless from any liability therefor. Robertson v. Hansen, 89 Idaho 107, 403 P.2d 585 (1965).

A real estate broker's contract of employment was not invalid because of gross errors in the description of the real estate to be sold where both the owner and the broker were in agreement as to the real estate to be sold, the farm was well known in the neighborhood, and the acreage and location as to county and section numbers were readily available. Central Idaho Agency, Inc. v. Turner, 92 Idaho 306, 442 P.2d 442 (1968).

Real estate broker was entitled to a commission on the ground that her prior services provided sufficient consideration, even though there was no prior agreement for payment of a commission, where ranch owner knew that commission clause in sales contract stated that payment was for services rendered and plaintiff had procured a party willing to buy the ranch at certain terms and had fulfilled all obligations. Isaguirre v. Echevarria, 96 Idaho 641, 534 P.2d 471 (1975).

Application in General.

No recovery can be had by broker on oral contract in action on quantum meruit; neither can he recover his expenses incurred in effecting sale in absence of contract to pay therefor. Weatherhead v. Cooney, 32 Idaho 127, 180 P. 760 (1919); Brace v. Johnson, 45 Idaho 327, 262 P. 148 (1927).

This section does not apply to contract between two brokers, one of whom is employed to assist in sale. Phy v. Selby, 35 Idaho 409, 207 P. 1077 (1922).

Oral agreement, under which defendant was to pay plaintiff excess of sale price over certain fixed sum if plaintiff should procure purchaser upon defendant's acquiring title through sheriff's deed, was within this section. Brace v. Johnson, 45 Idaho 327, 262 P. 148 (1927).

No commission is collectible unless the real estate broker is authorized in writing to find a purchaser. Stone v. Bradshaw, 64 Idaho 152, 128 P.2d 844 (1942).

A brokerage contract requires the signature of both the broker and the party seeking to obtain a purchaser and it is not a unilateral agreement which the broker may accept by full performance. C. Forsman Real Estate Co. v. Hatch, 97 Idaho 511, 547 P.2d 1116 (1976).

Where a partnership has made a real estate brokerage contract with one broker which authorizes him to "secure the cooperation" of other such brokers, the fact that the other brokers were not parties to the contract did not preclude their sharing in any brokerage fees recovered when they secured a buyer who was ready, willing, and able to perform. Marshall Bros. v. Geisler, 99 Idaho 734, 588 P.2d 933 (1978).

A real estate broker's agreement to find a buyer for property was valid and enforceable where the parties' agreement was in writing, the property was adequately described, the amount of the commission and terms of the listing were specified, and the agreement was signed by two of the co-owners with representations made to the broker by the signing co-owners that the contemplated transaction would be approved by the third co-owner, even though proposed sale failed because of third co-owner's refusal to sell her share of property. Rexburg Realty, Inc. v. Compton, 101 Idaho 466, 616 P.2d 245 (1980).

Absent a broker's employment contract or listing agreement meeting the requirements of this section, a broker in Idaho may recover a commission only in exceptional circumstances. Century 21 Quality Properties, Inc. v. Chandler, 103 Idaho 193, 646 P.2d 435 (Ct. App. 1982).

The fundamental purpose of this section is not served if the writing furnished by the broker and relied upon by him for his commission tends to create rather than dispel disputes. Century 21 Quality Properties, Inc. v. Chandler, 103 Idaho 193, 646 P.2d 435 (Ct. App. 1982).

Broker was not entitled to a commission under a purchase agreement between a business owner and the purchaser of the business's assets because no agent of the broker signed the agreement; thus, the statute of

frauds was not satisfied. Commercial Ventures v. Lea Family Trust, 145 Idaho 208, 177 P.3d 955 (2008).

A contract dispute between a pension services company and a home builder, who developed a subdivision with a loan of funds from the pension company, related to the repayment terms of the loan and not to the sale of property; thus, the provisions of this section were not applicable. Am. Pension Servs. v. Cornerstone Home Builders, Llc, 147 Idaho 638, 213 P.3d 1038 (2009).

Brokerage Commission.

Where an "earnest money" form agreement did no more than provide that a brokerage commission would be paid if a particular sale was completed by a certain date, but the sale was delayed without any fraudulent attempt by the owners or the purchasers, the brokerage house was not entitled to its commission where the sale occurred after that date. Century 21 Quality Properties, Inc. v. Chandler, 103 Idaho 193, 646 P.2d 435 (Ct. App. 1982).

Co-owners of Property.

A co-owner of property who has expressly or impliedly represented to a broker that he can convey the property to be sold cannot escape personal liability under a brokerage commission contract because it was not signed by the other co-owners and, accordingly, where a landowner signed a brokerage commission contract, but such contract was not signed by his wife or the family corporation, the co-owners of the property in question, the landowner could not escape liability on the contract. Garfield v. Tindall, 98 Idaho 841, 573 P.2d 966 (1978).

Description of Property.

Under § 54-2050 and this section, commission agreements do not have to include property descriptions that meet the stringent requirements of § 9-503. Rather, for purposes of a real estate brokerage agreement, a property description is sufficient where it is shown that there is no misunderstanding between the property owner and the broker as to the property to be offered for sale. In addition, parol evidence may be used to identify the property that is the subject of the agreement, provided it does not vary, add to, or subtract from the agreement the parties intended to make. Callies v. O'Neal, 147 Idaho 841, 216 P.3d 130 (2009).

Pleading.

In a real estate broker's action for commission, a complaint pleading the contract of employment equally susceptible of construction that the commissions were to be charged to the purchaser and to landowners was sufficient as against a general demurrer. Stone v. Bradshaw, 64 Idaho 152, 128 P.2d 844 (1942).

In a broker's action for commission, the allegation of his complaint, that the contract of his employment was signed by the owners of the real estate, was taken as true for the purpose of defendant's demurrer. Stone v. Bradshaw, 64 Idaho 152, 128 P.2d 844 (1942).

Statute of Frauds.

This section is a form of statute of frauds applicable to a real estate broker employment agreement. Rexburg Realty, Inc. v. Compton, 101 Idaho 466, 616 P.2d 245 (1980).

Verbal Agreements.

The complaint sufficiently stated a cause of action where former realty owners against whom mortgage had been foreclosed alleged an agreement had been entered into with junior lienholder that latter was to redeem property on last day of redemption period and that former owners were then to secure a purchaser for such realty and personal property located thereon, they to be compensated for such services by the grant of certain parcels of land, but buyer and junior lienholder in violation of such oral agreement consummated the sale depriving former owners of agreed compensation. Harvey v. Brown, 80 Idaho 379, 330 P.2d 982 (1958).

Cited Hull v. Cartin, 61 Idaho 578, 105 P.2d 196 (1940); Jones v. Maestas, 108 Idaho 69, 696 P.2d 920 (Ct. App. 1985).

Idaho Code Ch. 6

Chapter 6
PRODUCTION OF ALTERED WRITINGS

Sec.

9-601. Explanation of alterations.

§ 9-601. Explanation of alterations. — The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do [does] that he may give the writing in evidence, but not otherwise.

History.

C.C.P. 1881, § 940; R.S., R.C., & C.L., § 6030; C.S., § 7980; I.C.A., § 16-601.

STATUTORY NOTES

Compiler's Notes.

The bracketed word "does" in the last sentence was inserted by the compiler.

CASE NOTES

Admissibility of writing.

Holographic will.

Promissory note.

Sufficiency of compliance.

Admissibility of Writing.

This section allows admission of a document if the alteration can be explained. Pocatello R.R. Employees Fed. Credit Union v. Galloway, 117 Idaho 739, 791 P.2d 1318 (Ct. App. 1990).

Holographic Will.

Duty devolves on proponent of holographic will to explain cancellations on face and reverse side thereof, or at least to show that original instrument

had not been altered since coming into her hands. In re Fisher's Estate, 47 Idaho 668, 279 P. 291 (1929).

A proponent showing that she took a holographic will, sealed when she first saw it, from the testator's private safe and delivered it, still sealed, to her attorney with instructions to deliver it to the probate judge, who opened it, may invoke the presumption that the testator and none other was responsible for cancellation on the face and reverse side of said will. In re Fisher's Estate, 47 Idaho 668, 279 P. 291 (1929).

Evidence that the proponent had access for some considerable time to the repository in which a will was found is not sufficient to destroy the presumption that a cancellation therein was made by the testator, in view of the proponent's sworn testimony that she never saw the will itself until the probate judge opened an envelope containing it. In re Fisher's Estate, 47 Idaho 668, 279 P. 291 (1929).

In action by assignee of conditional seller for possession of an automobile, the conditional sales contract, on which the signature of the secretary and treasurer of the seller had been stricken out and that of the president substituted, was admissible to prove title, where the president explained the change and testified that the alteration was made prior to the execution of the contract by the buyer. Fidelity Acceptance Corp. v. Erickson, 62 Idaho 152, 108 P.2d 1031 (1941).

Promissory Note.

An amended promissory note was admissible in evidence where plaintiff admitted signing, along with her deceased husband, a note for $20,000, and where plaintiff further conceded that her husband had borrowed an additional $5,600 and that he initialed the original note upon borrowing the additional sum. Lowry v. Ireland Bank, 116 Idaho 708, 779 P.2d 22 (Ct. App. 1989).

Sufficiency of Compliance.

The party presenting a written instrument in evidence which, upon its face, shows that it has been altered is required to explain such alteration or at least to show that such instrument has not been altered since it came into his hands. The party who made or executed the instrument may have made or assented to the alteration before its execution and, yet, holder be unable

to prove that fact. Therefore, the exigency of the statute is complied with when the party presenting the instrument shows that there has been no alteration since it came into his hands. Mulkey v. Long, 5 Idaho 213, 47 P. 949 (1897); GMAC v. Talbott, 39 Idaho 707, 230 P. 30 (1924).

Altered bail bond is admissible in evidence where it is explained that the alteration appearing thereon was made with the consent of obligors, and it is shown that no alterations were made since delivery of the bond to the proper authorities. State v. Baird, 13 Idaho 126, 89 P. 298 (1907).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1271.

C.J.S. — 32A C.J.S., Evidence, § 1113 et seq.

ALR. — Presumptions and burden of proof as to time of alteration of deed. 30 A.L.R.3d 571.

Idaho Code Ch. 7

Chapter 7
MEANS OF PRODUCTION OF EVIDENCE

Sec.

9-701 — 9-703. [Repealed.]

9-704. [Repealed.]

9-705. Witness — When not obliged to attend. [Repealed.]

9-706. Subpoenas unnecessary when person is present.

9-707. Disobedience of witness a contempt. [Repealed.]

9-708. Disobedience of subpoena — Penalty to aggrieved party.

9-709. Attachment of witness.

9-710. Warrant of commitment — Contents, direction and execution.

9-711. Prisoners confined within state — Examination in prison — Production in court.

9-712. Examination or production of prisoners — Motion, affidavit, and order.

9-713. Prisoners — Examination in person or by deposition.

9-714 — 9-739. [Reserved.]

9-740. [Superseded.]

§ 9-701 — 9-703. Subpoena — Defined — Issued — Served. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 941 — 943; R.S., R.C., & C.L., §§ 6035 — 6037; C.S., §§ 7981 — 7983; I.C.A., §§ 16-701 — 16-703, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 45(a), 45(c)(2).

§ 9-704. Subpoena — Service on concealed witness. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 944; R.S., R.C., & C.L., § 6038; C.S., § 7984; I.C.A., § 16-704, was repealed by S.L. 2007, ch. 80, § 1.

§ 9-705. Witness — When not obliged to attend. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 945; R.S., R.C., & C.L., § 6039; C.S., § 7985; am. 1929, ch. 40, § 1, p. 50; I.C.A., § 16-705; am. 1969, ch. 260, § 1, p. 799, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 9-706. Subpoenas unnecessary when person is present. — A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

History.

C.C.P. 1881, § 946; R.S., R.C., & C.L., § 6040; C.S., § 7986; I.C.A., § 16-706.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 20 et seq.

§ 9-707. Disobedience of witness a contempt. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 947; R.S., R.C., & C.L., § 6041; C.S., § 7987; I.C.A., § 16-707, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 37(b)(1), 45(f).

§ 9-708. Disobedience of subpoena — Penalty to aggrieved party. — A witness disobeying a subpoena also forfeits to the party aggrieved the sum of $100, and all damages which he may sustain by the failure of a witness to attend, which forfeiture and damages may be recovered in a civil action.

History.

C.C.P. 1881, § 948; R.S., R.C., & C.L., § 6042; C.S., § 7988; I.C.A., § 16-708.

STATUTORY NOTES

Cross References.

Civil damages for refusal to testify in an election contest before the legislature, § 34-2110.

§ 9-709. Attachment of witness. — In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

History.

C.C.P. 1881, § 949; R.S., R.C., & C.L., § 6043; C.S., § 7989; I.C.A., § 16-709.

§ 9-710. Warrant of commitment — Contents, direction and execution. — Every warrant of commitment, issued by a court or officer pursuant to this chapter, must specify therein particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness pursuant to this chapter, must be directed to the sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the district court.

History.

C.C.P. 1881, § 950; R.S., R.C., & C.L., § 6044; C.S., § 7990; I.C.A., § 16-710.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 20 et seq.

§ 9-711. Prisoners confined within state — Examination in prison — Production in court. — If the witness be a prisoner, confined in a jail or prison within this state, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made by any justice of the supreme court or judge or magistrate of the district court.

History.

C.C.P. 1881, § 951; R.S., R.C., & C.L., § 6045; C.S., § 7991; I.C.A., § 16-711; am. 1969, ch. 126, § 2, p. 388.

STATUTORY NOTES

Cross References.

Order for production of prisoner in court, § 19-4601.

Effective Dates.

Section 11 of S.L. 1969, ch. 126 provided that the act be effective January 11, 1971.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 107.

§ 9-712. Examination or production of prisoners — Motion, affidavit, and order. — Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness and its materiality.

History.

C.C.P. 1881, § 952; R.S., R.C., & C.L., § 6046; C.S., § 7992; I.C.A., § 16-712.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 107.

§ 9-713. Prisoners — Examination in person or by deposition. — If the witness be imprisoned in the county where the action or proceeding is pending his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

History.

C.C.P. 1881, § 953; R.S., R.C., & C.L., § 6047; C.S., § 7993; I.C.A., § 16-713.

STATUTORY NOTES

Cross References.

Order for production of prisoner in court, § 19-4601.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 107.

Idaho Code § 9-714 — 9-739

§ 9-714 — 9-739. [Reserved.]

Idaho Code § 9-740

§ 9-740. Physical and mental examination. [Superseded.]

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho and designated § 9-740 by order of the supreme court promulgated March 19, 1951, which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

It is deemed to have been superseded by Idaho R. Civ. P. 35(a) and 35(b) in accordance with Idaho R. Civ. P. Rule 86.

Idaho Code Ch. 8

Chapter 8
UNIFORM MEDIATION ACT

Sec.

9-801. Short title.

9-802. Definitions.

9-803. Scope.

9-804. Privilege against disclosure — Admissibility — Discovery.

9-805. Waiver and preclusion of privilege.

9-806. Exceptions to privilege.

9-807. Prohibited mediator reports.

9-808. Confidentiality.

9-809. Mediator's disclosure of conflicts of interest — Background.

9-810. Participation in mediation.

9-811. International commercial mediation.

9-812. Relation to electronic signatures in global and national commerce act.

9-813. Uniformity of application and construction.

9-814. Application to existing agreements or referrals.

Official Comment

UNIFORM MEDIATION ACT

PREFATORY NOTE

During the last thirty years the use of mediation has expanded beyond its century-long home in collective bargaining to become an integral and growing part of the processes of dispute resolution in the courts, public

agencies, community dispute resolution programs, and the commercial and business communities, as well as among private parties engaged in conflict.

Public policy strongly supports this development. Mediation fosters the early resolution of disputes. The mediator assists the parties in negotiating a settlement that is specifically tailored to their needs and interests. The parties' participation in the process and control over the result contributes to greater satisfaction on their part. *See* Chris Guthrie & James Levin, *A "Party Satisfaction" Perspective on a Comprehensive Mediation Statute*, 13 Ohio St. J. on Disp. Resol. 885 (1998). Increased use of mediation also diminishes the unnecessary expenditure of personal and institutional resources for conflict resolution, and promotes a more civil society. For this reason, hundreds of state statutes establish mediation programs in a wide variety of contexts and encourage their use. *See* Sarah R. Cole, Craig A. McEwen & Nancy H. Rogers, *Mediation: Law, Policy*, Practice App. B (2001 2d ed. and 2001 Supp.) (hereinafter, Cole et al.). Many states have also created state offices to encourage greater use of mediation. *See, e.g.*, Ark. Code Ann. Section 16-7-101, *et seq*. (1995); Haw. Rev. Stat. Section 613-1, *et seq*. (1989); Kan. Stat. Ann. Section 5-501, *et seq*. (1996); Mass. Gen. Laws ch. 7, Section 51 (1998); Neb. Rev. Stat. Section 25-2902, *et seq*. (1991); N.J. Stat. Ann. Section 52:27E-73 (1994); Ohio Rev. Code Ann. Section 179.01, *et seq*. (1995); Okla. Stat. tit. 12, Section 1801, *et seq*. (1983); Or. Rev. Stat. Section 36.105, *et seq*. (1997); W. Va. Code Section 55-15-1, *et seq*. (1990).

These laws play a limited but important role in encouraging the effective use of mediation and maintaining its integrity, as well as the appropriate relationship of mediation with the justice system. In particular, the law has the unique capacity to assure that the reasonable expectations of participants regarding the confidentiality of the mediation process are met, rather than frustrated. For this reason, a central thrust of the Act is to provide a privilege that assures confidentiality in legal proceedings (*see* Sections 4-6 [§§ 9-804 to 9-806]). Because the privilege makes it more difficult to offer evidence to challenge the settlement agreement, the Drafters viewed the issue of confidentiality as tied to provisions that will help increase the likelihood that the mediation process will be fair. Fairness is enhanced if it will be conducted with integrity and the parties' knowing consent will be preserved. See Joseph B. Stulberg, *Fairness and Mediation*,

13 Ohio St. J. on Disp. Resol. 909 (1998); Nancy A. Welsh, *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 Harv. Neg. L. Rev. 1 (2001). The Act protects integrity and knowing consent through provisions that provide exceptions to the privilege (Section 6 [§ 9-806]), limit disclosures by the mediator to judges and others who may rule on the case (Section 7 [§ 9-807]), require mediators to disclose conflicts of interest (Section 9 [§ 9-809), and assure that parties may bring a lawyer or other support person to the mediation session (Section 10 [§ 9-810]). In some limited ways, the law can also encourage the use of mediation as part of the policy to promote the private resolution of disputes through informed self-determination. *See* discussion in Section 2; *see also* Nancy H. Rogers & Craig A. McEwen, *Employing the Law to Increase the Use of Mediation and to Encourage Direct and Early Negotiations*, 13 Ohio St. J. on Disp. Resol. 831 (1998); *Denburg v. Paker Chapin Flattau & Klimpl*, 624 N.E.2d 995, 1000 (N.Y. 1993) (societal benefit in recognizing the autonomy of parties to shape their own solution rather than having one judicially imposed). A uniform act that promotes predictability and simplicity may encourage greater use of mediation, as discussed in part 3, below.

At the same time, it is important to avoid laws that diminish the creative and diverse use of mediation. The Act promotes the autonomy of the parties by leaving to them those matters that can be set by agreement and need not be set inflexibly by statute. In addition, some provisions in the Act may be varied by party agreement, as specified in the comments to the sections. This may be viewed as a core Act which can be amended with type specific provisions not in conflict with the Uniform Mediation Act.

The provisions in this Act reflect the intent of the Drafters to further these public policies. The Drafters intend for the Act to be applied and construed in a way to promote uniformity, as stated in Section, and also in such manner as to: • promote candor of parties through confidentiality of the mediation process, subject only to the need for disclosure to accommodate specific and compelling societal interests (*see* part 1, below); • encourage the policy of fostering prompt, economical, and amicable resolution of disputes in accordance with principles of integrity of the mediation process, active party involvement, and informed self-determination by the parties

(*see* part 2, below); and • advance the policy that the decision-making authority in the mediation process rests with the parties (*see* part 2, below).

Although the Conference does not recommend "purpose" clauses, States that permit these clauses may consider adapting these principles to serve that function. Each is discussed in turn.

1. Promoting candor Candor during mediation is encouraged by maintaining the parties' and mediators' expectations regarding confidentiality of mediation communications. *See* Sections 4-6 [§§ 9-804 to 9-806]. Virtually all state legislatures have recognized the necessity of protecting mediation confidentiality to encourage the effective use of mediation to resolve disputes. Indeed, state legislatures have enacted more than 250 mediation privilege statutes. *See* Cole et al., *supra*, at apps. A and B. Approximately half of the States have enacted privilege statutes that apply generally to mediations in the State, while the other half include privileges within the provisions of statutes establishing mediation programs for specific substantive legal issues, such as employment or human rights. *Id*.

The Drafters recognize that mediators typically promote a candid and informal exchange regarding events in the past, as well as the parties' perceptions of and attitudes toward these events, and that mediators encourage parties to think constructively and creatively about ways in which their differences might be resolved. This frank exchange can be achieved only if the participants know that what is said in the mediation will not be used to their detriment through later court proceedings and other adjudicatory processes. *See, e.g.,* Lawrence R. Freedman and Michael L. Prigoff, *Confidentiality in Mediation: The Need for Protection*, 2 Ohio St. J. Disp. Resol. 37, 43-44 (1986); Philip J. Harter, *Neither Cop Nor Collection Agent: Encouraging Administrative Settlements by Ensuring Mediator Confidentiality*, 41 Admin. L. Rev. 315, 323-324 (1989); Alan Kirtley, *The Mediation Privilege's Transformation from Theory to Implementation: Designing a Mediation Privilege Standard to Protect Mediation Participants, the Process and the Public Interest*, 1995 J. Disp. Resol. 1, 17; Ellen E. Deason, *The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability?*, 85 Marquette L. Rev. 79 (2001). For a critical perspective, *see generally* Eric D. Green, *A Heretical View of the Mediation Privilege*, 2 Ohio St. J. on Disp. Resol. 1 (1986);

Scott H. Hughes, *The Uniform Mediation Act: To the Spoiled Go the Privileges*, 85 Marquette L. Rev. 9 (2001). Such party-candor justifications for mediation confidentiality resemble those supporting other communications privileges, such as the attorney-client privilege, the doctor-patient privilege, and various other counseling privileges. *See, e.g.,* Unif. R. Evid. R. 501-509 (1986); *see generally* Jack B. Weinstein, et. al, Evidence: Cases and Materials 1314-1315 (9th ed. 1997); *Developments in the Law - Privileged Communications*, 98 Harv. L. Rev. 1450 (1985); Paul R. Rice, *Attorney-Client Privilege in the United States*, Section 2/1-2.3 (2d ed. 1999). This rationale has sometimes been extended to mediators to encourage mediators to be candid with the parties by allowing the mediator to block evidence of the mediator's notes and other statements by the mediator. *See, e.g.,* Ohio Rev. Code Ann. Section 2317.023 (1996).

Similarly, public confidence in and the voluntary use of mediation can be expected to expand if people have confidence that the mediator will not take sides or disclose their statements, particularly in the context of other investigations or judicial processes. The public confidence rationale has been extended to permit the mediator to object to testifying, so that the mediator will not be viewed as biased in future mediation sessions that involve comparable parties. *See, e.g., NLRB v. Macaluso,* 618 F.2d 51 (9th Cir. 1980) (public interest in maintaining the perceived and actual impartiality of mediators outweighs the benefits derivable from a given mediator's testimony). To maintain public confidence in the fairness of mediation, a number of States prohibit a mediator from disclosing mediation communications to a judge or other officials in a position to affect the decision in a case. Del. Code Ann. tit. 19, Section 712(c) (1998) (employment discrimination); Fla. Stat. Ann. Section 760.34(1) (1997) (housing discrimination); Ga. Code Ann. Section 8-3-208(a) (1990) (housing discrimination); Neb. Rev. Stat. Section 20-140 (1973) (public accommodations); Neb. Rev. Stat. Section 48-1118 (1993) (employment discrimination); Cal. Evid. Code Section 703.5 (1994). This justification also is reflected in standards against the use of a threat of disclosure or recommendation to pressure the parties to accept a particular settlement. *See, e.g.,* Center for Dispute Settlement, National Standards for Court-Connected Mediation Programs (1994); Society for Professionals in Dispute Resolution, Mandated Participation and Settlement Coercion: Dispute Resolution as it Relates to the Courts (1991); *see also* Craig A.

McEwen & Laura Williams, *Legal Policy and Access to Justice Through Courts and Mediation*, 13 Ohio St. J. on Disp. Resol. 831, 874 (1998).

A statute is required only to assure that aspect of confidentiality that relates to evidence compelled in a judicial and other legal proceeding. The parties can rely on the mediator's assurance of confidentiality in terms of mediator disclosures outside the proceedings, as the mediator would be liable for a breach of such an assurance. *See, e.g., Cohen v. Cowles Media Co*, 501 U.S. 663 (1991) (First Amendment does not bar recovery against a newspaper's breach of promise of confidentiality); *Horne v. Patton*, 291 Ala. 701, 287 So.2d 824 (1973) (physician disclosure may be invasion of privacy, breach of fiduciary duty, breach of contract). Also, the parties can expect enforcement of their agreement to keep things confidential through contract damages and sometimes specific enforcement. The courts have also enforced court orders or rules regarding nondisclosure through orders striking pleadings and fining lawyers. *See* Section 8; *see also Parazino v. Barnett Bank of South Florida*, 690 So.2d 725 (Fla. Dist. Ct. App. 1997); *Bernard v. Galen Group, Inc.*, 901 F. Supp. 778 (S.D.N.Y. 1995). Promises, contracts, and court rules or orders are unavailing, however, with respect to discovery, trial, and otherwise compelled or subpoenaed evidence. Assurance with respect to this aspect of confidentiality has rarely been accorded by common law. Thus, the major contribution of the Act is to provide a privilege in legal proceedings, where it would otherwise either not be available or would not be available in a uniform way across the States.

As with other privileges, the mediation privilege must have limits, and nearly all existing state mediation statutes provide them. Definitions and exceptions primarily are necessary to give appropriate weight to other valid justice system values, in addition to those already discussed in this Section. They often apply to situations that arise only rarely, but might produce grave injustice in that unusual case if not excepted from the privilege.

In this regard, the Drafters recognize that the credibility and integrity of the mediation process is almost always dependent upon the neutrality and the impartiality of the mediator. The provisions of this Act are not intended to provide the parties with an unwarranted means to bring mediators into the discovery or trial process to testify about matters that occurred during a court ordered or agreed mediation. There are of course exceptions and they

are specifically provided for in Section 5(a)(1) [§ 9-805(1)(a)], (express waiver by the mediator) or pursuant to Section 6's narrow exceptions such as 6(b)(1) [§ 9-806(2)(a)], (felony). Contrary use of the provisions of this Act to involve mediators in the discovery or trial process would have a destructive effect on the mediation process and would not be in keeping with the intent and purpose of the Act.

Finally, these exceptions need not significantly hamper candor. Once the parties and mediators know the protections and limits, they can adjust their conduct accordingly. For example, if the parties understand that they will not be able to establish in court an oral agreement reached in mediation, they can reduce the agreement to a record or writing before relying on it. Although it is important to note that mediation is not essentially a truth-seeking process in our justice system such as discovery, if the parties realize that they will be unable to show that another party lied during mediation, they can ask for corroboration of the statement made in mediation prior to relying on the accuracy of it. A uniform and generic privilege makes it easier for the parties and mediators to understand what law will apply and therefore to understand the coverage and limits of the Act, so that they can conduct themselves in a mediation accordingly.

2. Encouraging resolution in accordance with other principles Mediation is a consensual process in which the disputing parties decide the resolution of their dispute themselves with the help of a mediator, rather than having a ruling imposed upon them. The parties' participation in mediation, often accompanied by counsel, allows them to reach results that are tailored to their interests and needs, and leads to their greater satisfaction in the process and results. Moreover, disputing parties often reach settlement earlier through mediation, because of the expression of emotions and exchanges of information that occur as part of the mediation process.

Society at large benefits as well when conflicts are resolved earlier and with greater participant satisfaction. Earlier settlements can reduce the disruption that a dispute can cause in the lives of others affected by the dispute, such as the children of a divorcing couple or the customers, clients and employees of businesses engaged in conflict. *See* generally, Jeffrey Rubin, Dean Pruitt and Sung Hee Kim, Social Conflict: Escalation, Stalemate and Settlement 68-116 (2d ed. 1994) (discussing reasons for, and

manner and consequences of conflict escalation). When settlement is reached earlier, personal and societal resources dedicated to resolving disputes can be invested in more productive ways. The public justice system gains when those using it feel satisfied with the resolution of their disputes because of their positive experience in a court-related mediation. Finally, mediation can also produce important ancillary effects by promoting an approach to the resolution of conflict that is direct and focused on the interests of those involved in the conflict, thereby fostering a more civil society and a richer discussion of issues basic to policy. *See* Nancy H. Rogers & Craig A. McEwen, *Employing the Law to Increase the Use of Mediation and to Encourage Direct and Early Negotiations*, 13 Ohio St. J. on Disp. Resol. 831 (1998); *see also* Frances McGovern, *Beyond Efficiency: A Bevy of ADR Justifications (An Unfootnoted Summary*), 3 Disp. Resol. Mag. 12-13 (1997); Wayne D. Brazil, *Comparing Structures for the Delivery of ADR Services by Courts: Critical Values and Concerns*, 14 Ohio St. J. on Disp. Resol. 715 (1999); Robert D. Putnam, Bowling Alone: The Collapse and Revival of American Community (2000) (discussion the causes for the decline of civic engagement and ways of ameliorating the situation).

State courts and legislatures have perceived these benefits, as well as the popularity of mediation, and have publicly supported mediation through funding and statutory provisions that have expanded dramatically over the last twenty years. *See*, Cole et al., *supra* 5:1-5:19; Richard C. Reuben, *The Lawyer Turns Peacemaker*, 82 A.B.A. J. 54 (Aug. 1996). The legislative embodiment of this public support is more than 2500 state and federal statutes and many more administrative and court rules related to mediation. *See* Cole et al, *supra* apps. A and B.

The primary guarantees of fairness within mediation are the integrity of the process and informed self-determination. Self-determination also contributes to party satisfaction. Consensual dispute resolution allows parties to tailor not only the result but also the process to their needs, with minimal intervention by the State. For example, parties can agree with the mediator on the general approach to mediation, including whether the mediator will be evaluative or facilitative. This party agreement is a flexible means to deal with expectations regarding the desired style of mediation, and so increases party empowerment. Indeed, some scholars have theorized

that individual empowerment is a central benefit of mediation. *See, e.g.*, Robert A. Baruch Bush & Joseph P. Folger, *The Promise of Mediation* (1994).

Self-determination is encouraged by provisions that limit the potential for coercion of the parties to accept settlements, *see* Section 9(a) [§ 9-809(1)], and that allow parties to have counsel or other support persons present during the mediation session. *See* Section 10 [§ 9-810]. The Act promotes the integrity of the mediation process by requiring the mediator to disclose conflicts of interest, and to be candid about qualifications. *See* Section 9 [§ 9-809].

3. Importance of uniformity.

This Act is designed to simplify a complex area of the law. Currently, legal rules affecting mediation can be found in more than 2500 statutes. Many of these statutes can be replaced by the Act, which applies a generic approach to topics that are covered in varying ways by a number of specific statutes currently scattered within substantive provisions.

Existing statutory provisions frequently vary not only within a State but also by State in several different and meaningful respects. The privilege provides an important example. Virtually all States have adopted some form of privilege, reflecting a strong public policy favoring confidentiality in mediation. However, this policy is effected through more than 250 different state statutes. Common differences among these statutes include the definition of mediation, subject matter of the dispute, scope of protection, exceptions, and the context of the mediation that comes within the statute (such as whether the mediation takes place in a court or community program or a private setting).

Uniformity of the law helps bring order and understanding across state lines, and encourages effective use of mediation in a number of ways. First, uniformity is a necessary predicate to predictability if there is any potential that a statement made in mediation in one State may be sought in litigation or other legal processes in another State. For this reason, the UMA will benefit those States with clearly established law or traditions, such as Texas, California, and Florida, ensuring that the privilege for mediation communications made within those States is respected in other States in which those mediation communications may be sought. The law of

privilege does not fit neatly into a category of either substance or procedure, making it difficult to predict what law will apply. *See, e.g., U.S. v. Gullo*, 672 F. Supp. 99 (W.D.N.Y. 1987) (holding that New York mediation-arbitration privilege applies in federal court grand jury proceeding); *Royal Caribbean Corp. v. Modesto*, 614 So.2d 517 (Fla. App. 1992) (holding that Florida mediation privilege law applies in federal Jones Act claim brought in Florida court). Moreover, parties to a mediation cannot always know where the later litigation or administrative process may occur. Without uniformity, there can be no firm assurance in any State that a mediation is privileged. Ellen E. Deason, *The Quest for Uniformity in Mediation Confidentiality: Foolish Consistency or Crucial Predictability?*, 85 Marquette L. Rev . 79 (2001).

A second benefit of uniformity relates to cross-jurisdictional mediation. Mediation sessions are increasingly conducted by conference calls between mediators and parties in different States and even over the Internet. Because it is unclear which State's laws apply, the parties cannot be assured of the reach of their home state's confidentiality protections.

A third benefit of uniformity is that a party trying to decide whether to sign an agreement to mediate may not know where the mediation will occur and therefore whether the law will provide a privilege or the right to bring counsel or support person. Uniformity will add certainty on these issues, and thus allows for more informed party self-determination.

Finally, uniformity contributes to simplicity. Mediators and parties who do not have meaningful familiarity with the law or legal research currently face a more formidable task in understanding multiple confidentiality statutes that vary by and within relevant States than they would in understanding a Uniform Act. Mediators and parties often travel to different States for the mediation sessions. If they do not understand these legal protections, participants may react in a guarded way, thus reducing the candor that these provisions are designed to promote, or they may unnecessarily expend resources to have the legal research conducted.

4. Ripeness of a uniform law.

The drafting of the Uniform Mediation Act comes at an opportune moment in the development of the law and the mediation field.

First, States in the past thirty years have been able to engage in considerable experimentation in terms of statutory approaches to mediation, just as the mediation field itself has experimented with different approaches and styles of mediation. Over time clear trends have emerged, and scholars and practitioners have a reasonable sense as to which types of legal standards are helpful, and which kinds are disruptive. The Drafters have studied this experimentation, enabling state legislators to enact the Act with the confidence that can only come from learned experience. *See Symposium on Drafting a Uniform/Model Mediation Act*, 13 Ohio St. J. on Disp. Resol. 787, 788 (1998).

Second, as the use of mediation becomes more common and better understood by policymakers, States are increasingly recognizing the benefits of a unified statutory environment for privilege that cuts across all applications. This modern trend is seen in about half of the States that have adopted statutes of general application, and these broad statutes provide guidance on effective approaches to a more general privilege. *See, e.g.*, Ariz. Rev. Stat. Ann. Section 12-2238 (1993); Ark. Code Ann. Section 16-7-206 (1993); Cal. Evid. Code Section 1115, *et seq*. (1997); Iowa Code Section 679C.2 (1998); Kan. Stat. Ann. Section 60-452 (1964); La. Rev. Stat. Ann. Section 9:4112 (1997); Me. R. Evid. Section 408 (1993); Mass. Gen. Laws ch. 233, Section 23C (1985); Minn. Stat. Ann. Section 595.02 (1996); Neb. Rev. Stat. Section 25-2914 (1997); Nev. Rev. Stat. Section 48.109(3) (1993); N.J. Rev. Stat. Section 2A:23A-9 (1987); Ohio Rev. Code Ann. Section 2317.023 (1996); Okla. stat. tit. 12, Section 1805 (1983); Or. Rev. Stat. Ann. Section 36.220 (1997); 42 Pa. Cons. Stat. Ann. Section 5949 (1996); R.I. Gen. Laws Section 9-19-44 (1992); S.D. Codified Laws Section 19-13-32 (1998); Tex. Civ. Prac. & Rem. Code Section 154.053 (c) (1999); Utah Code Ann. Section 30-3-38(4) (2000); Va. Code Ann. Section 8.01-576.10 (1994); Wash. Rev. Code Section 5.60.070 (1993); Wis. Stat. Section 904.085(4)(a) (1997); Wyo. Stat. Ann. Section 1-43-103 (1991).

5. A product of a consensual process.

The Mediation Act results from an historic collaboration. The Uniform Law Commission Drafting Committee, chaired by Judge Michael B. Getty, was joined in the drafting of this Act by a Drafting Committee sponsored by the American Bar Association, working through its Section of Dispute Resolution, which was co-chaired by former American Bar Association

President Roberta Cooper Ramo (Modrall, Sperling, Roehl, Harris & Sisk, P.A.) and Chief Justice Thomas J. Moyer of the Supreme Court of Ohio. The leadership of both organizations had recognized that the time was ripe for a uniform law on mediation. While both Drafting Committees were independent, they worked side by side, sharing resources and expertise in a collaboration that augmented the work of both Drafting Committees by broadening the diversity of their perspectives. See Michael B. Getty, Thomas J. Moyer & Roberta Cooper Ramo, *Preface to Symposium on Drafting a Uniform/Model Mediation Act*, 13 Ohio St. J. on Disp. Resol. 787 (1998). For instance, the Drafting Committees represented various contexts in which mediation is used: private mediation, court-related mediation, community mediation, and corporate mediation. Similarly, they also embraced a spectrum of viewpoints about the goals of mediation — efficiency for the parties and the courts, the enhancement of the possibility of fundamental reconciliation of the parties, and the enrichment of society through the use of less adversarial means of resolving disputes. They also included a range of viewpoints about how mediation is to be conducted, including, for example, strong proponents of both the evaluative and facilitative models of mediation, as well as supporters and opponents of mandatory mediation.

Finally, with the assistance of a grant from the William and Flora Hewlett Foundation, both Drafting Committees had substantial academic support for their work by many of mediation's most distinguished scholars, who volunteered their time and energies out of their belief in the utility and timeliness of a uniform mediation law. These included members of the faculties of Harvard Law School, the University of Missouri-Columbia School of Law, the Ohio State University College of Law, and Bowdoin College, including Professors Frank E.A. Sander (Harvard Law School); Chris Guthrie, John Lande, James Levin, Richard C. Reuben, Leonard L. Riskin, Jean R. Sternlight (University of Missouri-Columbia School of Law); James Brudney, Sarah R. Cole, L. Camille H/Aebert, Nancy H. Rogers, Joseph B. Stulberg, Laura Williams, and Charles Wilson (Ohio State University College of Law); Jeanne Clement (Ohio State University College of Nursing); and Craig A. McEwen (Bowdoin College). The Hewlett support also made it possible for the Drafting Committees to bring noted scholars and practitioners from throughout the nation to advise the Committees on particular issues. These are too numerous to mention but the

Committees especially thank those who came to meetings at the advisory group's request, including Peter Adler, Christine Carlson, Jack Hanna, Eileen Pruett, and Professors Ellen Deason, Alan Kirtley, Kimberlee K. Kovach, Thomas J. Stipanowich, and Nancy Welsh.

Their scholarly work for the project examined the current legal structure and effectiveness of existing mediation legislation, questions of quality and fairness in mediation, as well as the political environment in which uniform or model legislation operates. *See* Frank E.A. Sander, *Introduction to Symposium on Drafting a Uniform/Model Mediation Act*, 13 Ohio St. J. on Disp. Resol. 791 (1998). Much of this work was published as a law review symposium issue. *See Symposium on Drafting a Uniform/Model Mediation Act*, 13 Ohio St. J. Disp. Resol. 787 (1998).

Finally, observers from a vast array of mediation professional and provider organizations also provided extensive suggestions to the Drafting Committees, including: the Association for Conflict Resolution (formerly the Society of Professionals in Dispute Resolution, Academy of Family Mediators and CRE/Net), National Council of Dispute Resolution Organizations, American Arbitration Association, Federal Mediation and Conciliation Service, Judicial Arbitration and Mediation Services, Inc. (JAMS), CPR Institute for Dispute Resolution, International Academy of Mediators, National Association for Community Mediation, and the California Dispute Resolution Council. Other official observers to the Drafting Committees included: the American Bar Association Section of Administrative Law and Regulatory Practice, American Bar Association Section of Litigation, American Bar Association Senior Lawyers Division, American Bar Association Section of Torts and Insurance Practice, American Trial Lawyers Association, Equal Employment Advisory Council, National Association of District Attorneys, and the Society of Professional Journalists.

Similarly, the Act also received substantive comments from several state and local Bar Associations, generally working through their ADR committees, including: the Alameda County Bar Association, the Beverly Hills Bar Association, the State Bar of California, the Chicago Bar Association, the Louisiana State Bar Association, the Minnesota State Bar Association, and the Mississippi Bar. In addition, the Committees' work

was supplemented by other individual mediators and mediation professional organizations too numerous to mention.

6. Drafting philosophy.

Mediation often involves both parties and mediators from a variety of professions and backgrounds, many of who are not attorneys or represented by counsel. With this in mind, the Drafters sought to make the provisions accessible and understandable to readers from a variety of backgrounds, sometimes keeping the Act shorter by leaving some discretion in the courts to apply the provisions in accordance with the general purposes of the Act, delineated and expanded upon in Section 1 of this Prefatory Note. These policies include fostering prompt, economical, and amicable resolution, integrity in the process, self-determination by parties, candor in negotiations, societal needs for information, and uniformity of law.

The Drafters sought to avoid including in the Act those types of provisions that should vary by type of program or legal context and that were therefore more appropriately left to program-specific statutes or rules. Mediator qualifications, for example, are not prescribed by this Act. The Drafters also recognized that some general standards are often better applied through those who administer ethical standards or local rules, where an advisory opinion might be sought to guide persons faced with immediate uncertainty. Where individual choice or notice was important to allow for self-determination or avoid a trap for the unwary, such as for nondisclosure by the parties outside the context of proceedings, the Drafters left the matter largely to local rule or contract among the participants. As the result, the Act largely governs those narrow circumstances in which the mediation process comes into contact with formal legal processes.

Finally, the Drafters operated with respect for local customs and practices by using the Act to establish a floor rather than a ceiling for some protections. It is not the intent of the Act to preempt state and local court rules that are consistent with the Act, such as those well-established rules in Florida. *See*, for example, Fla. R. Civ. P. Rule 1.720; *see also* Sections 12 and 15.

Consistent with existing approaches in law, and to avoid unnecessary disruption, the Act adopts the structure used by the overwhelming majority of these general application States: the evidentiary privilege. However,

many state and local laws do not conflict with the Act and would not be preempted by it. For example, statutes and court rules providing standards for mediators, setting limits of compulsory participation in mediation, and providing mediator qualifications would remain in force.

The matter may be less clear if the existing provisions relate to the mediation privilege. Legislative notes provide guidance on some key issues. Nevertheless, in order to achieve the simplicity and clarity sought by the Act, it will be important in each State to review existing privilege statutes and specify in Section 15 which will be repealed and which will remain in force.

2003 AMENDMENT TO THE UNIFORM MEDIATION ACT

SECTION 11. INTERNATIONAL COMMERCIAL MEDIATION

PREFATORY NOTE

As currently approved, the Uniform Mediation Act (UMA) applies to both domestic and international mediation. The purpose of this Amendment is to facilitate state adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Conciliation (set forth in Appendix A) that was adopted on November 19, 2002. Adoption of the amendment will encourage the use of mediation of commercial disputes among parties from different nations while maintaining the strong protections of the Uniform Mediation Act regarding the use of mediation communications in legal proceedings.

There is broad international agreement that it is important to have a similar legal approach internationally for the mediation of international commercial disputes, so that the international parties will know the applicable law and feel comfortable using mediation. With this increased use of mediation, the parties will resolve more of their disputes short of arbitration and litigation. The stated purpose of the UNCITRAL Model Law is to "support the increased use of conciliation" for international commercial disputes, according to the Draft Guide issued by the UNCITRAL Secretariat. Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation (November 14, 2002) ("UNCITRAL Draft Guide"). The Draft Guide notes

that parties in international commercial conciliation can agree to incorporate by reference existing conventions, such as the UNCITRAL Conciliation Rules, but often fail to make the reference. The UNCITRAL Draft Guide states, "The conciliation process might thus benefit from the establishment of non-mandatory legislative provisions that would apply when the parties mutually desired to conciliate but had not agreed on a set of conciliation rules. Moreover in countries where agreements as to the admissibility of certain kinds of evidence were of uncertain effect, uniform legislation might provide a useful clarification. In addition it was pointed out with respect to certain issues, such as facilitating enforcement of settlement agreements resulting from conciliations, that the level of predictability and certainty required to foster conciliation could only be achieved through legislation." UNCITRAL Draft Guide 4-5.

International consensus on the benefits on enacting the Model Law is strong, and the U.S. State Department has joined the consensus. UNCITRAL adopted the Model Law on June 28, 2002, and it was endorsed by the United Nations General Assembly on November 19, 2002. The negotiations leading to the Model Law draft represented a major international effort to harmonize competing legal approaches in order to adopt a common default law for international conciliation. Representatives of 90 countries participated in the drafting of the UNCITRAL Model Law over a two-year period. In addition, 12 intergovernmental organizations and 22 international non-governmental organizations took part in the discussions. The U.S. Department of State represented the United States in the drafting process. The U.S. delegation included advisors from NCCUSL, the American Bar Association, the American Arbitration Association, and the Maritime Law Association. Adoption of the UNCITRAL Model Law by U.S. States would help to achieve the desired international uniformity in a default law for international conciliation.

There also are strong reasons not to re-draft the UNCITRAL Model Law in substantial ways for enactment by the States. International lawyers may be hesitant to conciliate if they must retain domestic counsel to determine the effects of any changes in the U.S. draft. The UNCITRAL Model Law Draft Guide notes, "In order to achieve a satisfactory degree of harmonization and certainty, States should consider making as few changes as possible in incorporating the Model Law into their legal system, but, if

changes are made, they should remain within the basic principles of the Model Law. A significant reason for adhering as much as possible to the uniform text is to make the national law as transparent and familiar as possible for foreign parties, advisers and conciliators who participate in conciliations in the enacting state." UNCITRAL Draft Guide 5.

This Amendment incorporates the existing version (Appendix A) of the UNCITRAL Model Law by reference in order to avoid the substantial re-drafting that would be necessary to comport with U.S. drafting conventions. The Legislative Note references important notes on interpretation from the UNCITRAL Secretariat, the Draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation (November 14, 2002).

The Amendment also makes clear that the protection to mediation communications should be as strong for international commercial mediation as it is for domestic mediation of all types under the Uniform Mediation Act. It also makes explicit how the parties can waive those protections.

The Amendment was drafted at two sessions that included broad observer participation, including representatives of the Association of Conflict Resolution, the U.S. State Department, and the American Bar Association. Professors Ellen Deason and Jim Brudney of the Ohio State University Moritz College of Law provided able counsel and assistance in the drafting process.

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§ 9-801. Short title. — This chapter may be cited as the "Uniform Mediation Act."

History.

I.C., § 9-801, as added by 2008, ch. 35, § 1, p. 67.

STATUTORY NOTES

Prior Laws.

The following sections were declared null and void December 31, 1997 by Section 4 of S.L. 1995, ch. 359 which read: "Section 1 of this act shall be in full force and effect on and after July 1, 1995 and shall be null and void and of no force and effect on and after December 31, 1997. Section 2 of this act shall be in full force and effect on and after July 1, 1995. Section 3 of this act shall be in full force and effect on and after December 31, 1995."

Sections 9-801, 9-802, 9-805 — 9-811 which comprised I.C., §§ 9-801, 9-802, 9-805 — 9-811 as added by 1995, ch. 359, § 1, p. 1218 was declared null and void December 31, 1997, by S.L. 1995, ch. 359, § 1.

Section 9-803 which comprised I.C., § 9-803, as added by 1995, ch. 359, § 1, p. 1218; am. 1996, ch. 414, § 1, p. 1376.

Section 9-804 which comprised I.C., § 9-804, as added by 1995, ch. 359, § 1, p. 1218; am. 1996, ch. 414, § 2, p. 1376.

Another former § 9-801, which comprised C.C.P. 1881, § 954; R.S., R.C., & C.L., § 6052; C.S., § 7994; I.C.A., § 16-801, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 9-802. Definitions. — In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who conducts a mediation.

(5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Proceeding" means:

(a) A judicial, administrative, arbitral or other adjudicative process, including related prehearing and posthearing motions, conferences and discovery; or

(b) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(a) To execute or adopt a tangible symbol with the present intent to authenticate a record;

(b) To attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate a record; or

(c) To assent on a stenographic record with the present intent to authenticate a record.

History.

I.C., § 9-802, as added by 2008, ch. 35, § 1, p. 67.

STATUTORY NOTES

Prior Laws.

Former § 9-802 was declared null and void. See Prior Laws, § 9-801.

Another former § 9-802, which comprised C.C.P. 1881, § 955; R.S., R.C., & C.L., § 6053; C.S., § 7995; I.C.A., § 16-802, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

Official Comment

1. Section 2(1). "Mediation."

The emphasis on negotiation in this definition is intended to exclude adjudicative processes, such as arbitration and fact-finding, as well as counseling. It was not intended to distinguish among styles or approaches to mediation. An earlier draft used the word "conducted," but the Drafting Committees preferred the word "assistance" to emphasize that, in contrast to an arbitration, a mediator has no authority to issue a decision. The use of the word "facilitation" is not intended to express a preference with regard to approaches of mediation. The Drafters recognize approaches to mediation will vary widely.

2. Section 2(2). "Mediation Communication."

Mediation communications are statements that are made orally, through conduct, or in writing or other recorded activity. This definition is aimed primarily at the privilege provisions of Sections 4-6 [§§ 9-804 through 9-806]. It is similar to the general rule, as reflected in Uniform Rule of Evidence 801, which defines a "statement" as "an oral or written assertion

or nonverbal conduct of an individual who intends it as an assertion." Most generic mediation privileges cover communications but do not cover conduct that is not intended as an assertion. Ark. Code Ann. Section 16-7-206 (1993); Cal. Evid. Code Section 1119 (1997); Fla. Stat. Ann. Section 44.102 (1999); Iowa Code Ann. Section 679C.3 (1998); Kan. Stat. Ann. Section 60-452a (1964) (assertive representations); Mass. Gen. Laws ch. 233, Section 23C (1985); Mont. Code Ann. Section 26-1-813 (1999); Neb. Rev. Stat. Section 25-2914 (1997); Nev. Rev. Stat. Section 25-2914 (1997) (assertive representations); N.C. Gen. Stat. 7A-38.1(1) (1995); N.J. Rev. Stat. Section 2A:23A-9 (1987); Ohio Rev. Code Ann. Section 2317.023 (1996); Okla. Stat. tit. 12, Section 1805 (1983); Or. Rev. Stat. Ann. Section 36.220 (1997); 42 Pa. Cons. Stat. Ann. Section 5949 (1996); R.I. Gen. Laws Section 9-19-44 (1992); S.D. Codified Laws Section 19-13-32 (1998); Va. Code Ann. Section 8.01-576.10 (1994); Wash. Rev. Code Section 5.60.070 (1993); Wis. Stat. Section 904.085(4)(a) (1997); Wyo. Stat. Ann. Section 1-43-103 (1991). The mere fact that a person attended the mediation — in other words, the physical presence of a person — is not a communication. By contrast, nonverbal conduct such as nodding in response to a question would be a "communication" because it is meant as an assertion; however nonverbal conduct such as smoking a cigarette during the mediation session typically would not be a "communication" because it was not meant by the actor as an assertion.

A mediator's mental impressions and observations about the mediation present a more complicated question, with important practical implications. *See Olam v. Congress Mortgage Co.*, 68 F. Supp. 2d 1110 (N.D. Cal. 1999). As discussed below, the mediation privilege is modeled after, and draws heavily upon, the attorney-client privilege, a strong privilege that is supported by well-developed case law. Courts are to be expected to look to that well developed body of law in construing this Act. In this regard, mental impressions that are based even in part on mediation communications would generally be protected by privilege.

More specifically, communications include both statements and conduct meant to inform, because the purpose of the privilege is to promote candid mediation communications. *U.S. v. Robinson*, 121 F.3d 911, 975 (5th Cir. 1997). By analogy to the attorney-client privilege, silence in response to a question may be a communication, if it is meant to inform. *U.S. v. White*,

950 F.2d 426, 430 n.2 (7th Cir. 1991). Further, conduct meant to explain or communicate a fact, such as the re-enactment of an accident, is a communication. *See* Weinstein's Federal Evidence 503.14 (2000). Similarly, a client's revelation of a hidden scar to an attorney in response to a question is a communication if meant to inform. In contrast, a purely physical phenomenon, such as a tattoo or the color of a suit of clothes, observable by all, is not a communication.

If evidence of mental impressions would reveal, even indirectly, mediation communications, then that evidence would be blocked by the privilege. *Gunther v. U.S.,* 230 F.2d 222, 223-224 (D.C. Cir. 1956). For example, a mediator's mental impressions of the capacity of a mediation participant to enter into a binding mediated settlement agreement would be privileged if that impression was in part based on the statements that the party made during the mediation, because the testimony might reveal the content or character of the mediation communications upon which the impression is based. In contrast, the mental impression would not be privileged if it was based exclusively on the mediator's observation of that party wearing heavy clothes and an overcoat on a hot summer day because the choice of clothing was not meant to inform. *Darrow v. Gunn*, 594 F.2d 767, 774 (9th Cir. 1979).

There is no justification for making readily observable conduct privileged, certainly not more privileged than it is under the attorney-client privilege. If the conduct is seen in the mediation room, it can also be observed, even photographed, outside of the mediation room, as well as in other contexts. One of the primary reasons for making mediation communications privileged is to promote candor, and excluding evidence of a readily observable characteristic is not necessary to promote candor. *In re Walsh*, 623 F.2d 489, 494 (7th Cir. 1980).

The provision makes clear that conversations to initiate mediation and other non-session communications that are related to a mediation are considered "mediation communications." Most statutes are silent on the question of whether they cover conversations to initiate mediation. However, candor during these initial conversations is critical to insuring a thoughtful agreement to mediate, and the Act therefore extends confidentiality to these conversations to encourage that candor.

The definition in Section 2(2) is narrowly tailored to permit the application of the privilege to protect communications that a party would reasonably believe would be confidential, such as the explanation of the matter to an intake clerk for a community mediation program, and communications between a mediator and a party that occur between formal mediation sessions. These would be communications "*made for the purposes of* considering, initiating, continuing, or reconvening a mediation or retaining a mediator." This language protects the confidentiality of such a communication when doing so advances the underlying policies of the privilege, while at the same time gives the courts the latitude to restrict the application of the privilege in situations where such an application of the privilege would constitute an abuse. For example, an individual trying to hide information from a court might later attempt to characterize a call to an acquaintance about a dispute as an inquiry to the acquaintance about the possibility of mediating the dispute. This definition would permit the court to disallow a communication privilege, and admit testimony from that acquaintance by finding that the communication was not "*made for the purposes of* initiating considering, initiating, continuing, or reconvening a mediation or retaining a mediator."

Responding in part to public concerns about the complexity of earlier drafts, the Drafting Committees also elected to leave the question of when a mediation ends to the sound judgment of the courts to determine according to the facts and circumstances presented by individual cases. *See Bidwell v. Bidwell*, 173 Or. App. 288 (2001) (ruling that letters between attorneys for the parties that were sent after referral to mediation and related to settlement were mediation communications and therefore privileged under the Oregon statute). In weighing language about when a mediation ends, the Drafting Committees considered other more specific approaches for answering these questions. One approach in particular would have terminated the mediation after a specified period of time if the parties failed to reach an agreement, such as the 10-day period specified in Cal. Evid. Code Section 1125 (1997) (general). However, the Drafting Committees rejected that approach because it felt that such a requirement could be easily circumvented by a routine practice of extending mediation in a form mediation agreement. Indeed, such an extension in a form agreement could result in the coverage of communications unrelated to the dispute for years to come, without furthering the purposes of the privilege.

Finally, this definition would also include mediation "briefs" and other reports that are prepared by the parties for the mediator. Whether the document is prepared for the mediation is a crucial issue. For example, a tax return brought to a divorce mediation would not be a "mediation communication" because it was not a "statement made as part of the mediation," even though it may have been used extensively in the mediation. However, a note written on the tax return to clarify a point for other participants would be a mediation communication. Similarly, a memorandum specifically prepared for the mediation by the party or the party's representative explaining the rationale behind certain positions taken on the tax return would be a "mediation communication." Documents prepared for the mediation by expert witnesses attending the mediation would also be covered by this definition. *See* Section 4(b)(3) [§ 9-804(2)(c)].

3. Section 2(3). "Mediator."

Several points are worth stressing with regard to the definition of mediator. First, this definition should be read in conjunction with Section 9(c) [§ 9-809(3)], which makes clear that the Act does not require that a mediator have a special qualification by background or profession. Second, this definition should be read in conjunction with the model language in Section 9(a) through (e) [§ 9-809(1) through (5)] on disclosures of conflicts of interest. Finally, the use of the word "conducts" is intended to be value neutral, and should not be read to express a preference for the manner by which mediations are conducted. *Compare* Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Tactics: A Grid for the Perplexed*, 1 Harv. Neg. L. Rev. 7 (1996) with Joseph B. Stulberg, *Facilitative vs. Evaluative Mediator Orientations: Piercing the "Grid" Lock*, 24 Fla. St. U. L. Rev. 985 (1997)

4. Section 2(4). "Nonparty Participant."

This definition would cover experts, friends, support persons, potential parties, and others who participate in the mediation. The definition is pertinent to the privilege accorded nonparty participants in Section 4(b)(3) [§ 9-804(2)(c)], and to the ability of parties to bring attorneys or support persons in Section 10 [§ 9-810]. In the event that an attorney is deemed to be a nonparty participant, that attorney would be constricted in exercising

that right by ethical provisions requiring the attorney to act in ways that are consistent with the interests of the client. *See* Model Rule of Professional Conduct 1.3 (Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.); and Rule 1.6(a) (Confidentiality of Information. A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).).

5. Section 2(5). "Mediation Party."

The Act defines "mediation party" to be a person who participates in a mediation and whose agreement is necessary to resolve the dispute. These limitations are designed to prevent someone with only a passing interest in the mediation, such as a neighbor of a person embroiled in a dispute, from attending the mediation and then blocking the use of information or taking advantage of rights meant to be accorded to parties. Such a person would be a nonparty participant and would have only a limited privilege. *See* Section 4(b)(3) [§ 9-804(2)(c)]. Similarly, counsel for a mediation party would not be a mediation party, because their agreement is not necessary to the resolution of the dispute.

Because of these structural limitations on the definition of parties, participants who do not meet the definition of "mediation party," such as a witness or expert on a given issue, do not have the substantial rights under additional sections that are provided to parties. Rather, these nonparty participants are granted a more limited privilege under Section 4(b)(3) [§ 9-804(2)(c)]. Parties seeking to apply restrictions on disclosures by such participants — including their attorneys and other representatives — should consider drafting such a confidentiality obligation into a valid and binding agreement that the participant signs as a condition of participation in the mediation.

A mediation party may participate in the mediation in person, by phone, or electronically. A person, as defined in Section 2(6), may participate through a designated agent. If the party is an entity, it is the entity, rather than a particular agent, that holds the privilege afforded in Sections 4-6 [§§ 9-804 through 9-806].

6. Section 2(6). "Person."

Sections 2(6) adopts the standard language recommended by the National Conference of Commissioners of Uniform State Laws for the drafting of statutory language, and the term should be interpreted in a manner consistent with that usage.

7. Section 2(7). "Proceeding."

Section 2(7) defines the proceedings to which the Act applies, and should be read broadly to effectuate the intent of the Act. It was added to allow the Drafters to delete repetitive language throughout the Act, such as judicial, administrative, arbitral, or other adjudicative processes, including related prehearing and posthearing motions, conferences, and discovery, or legislative hearings or similar processes.

8. Section 2(8). "Record" and Section 2(9). "Sign."

These Sections adopt standard language approved by the Uniform Law Conference that is intended to conform Uniform Acts with the Uniform Electronic Transactions Act (UETA) and its federal counterpart, Electronic Signatures in Global and National Commerce Act (E-Sign) (15 U.S.C 7001, et seq. (2000).

Both UETA and E-Sign were written in response to broad recognition of the commercial and other use of electronic technologies for communications and contracting, and the consensus that the choice of medium should not control the enforceability of transactions. These Sections are consistent with both UETA and E-Sign. UETA has been adopted by the Conference and received the approval of the American Bar Association House of Delegates. As of December 2001, it had been enacted in more than 35 states. *See* also Section 11 [§ 9-811], Relation to Electronic Signatures in Global and National Commerce Act.

The practical effect of these provisions is to make clear that electronic signatures and documents have the same authority as written ones for purposes of establishing an agreement to mediate under Section 3(a) [§ 9-803(1)], party opt-out of the mediation privilege under Section 3(c) [§ 9-803(3)], and participant waiver of the mediation privilege under Section 5(a) [§ 9-805(1)].

§ 9-803. Scope. — (1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:

(a) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency or arbitrator;

(b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(c) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:

(a) Relating to the establishment, negotiation, administration or termination of a collective bargaining relationship;

(b) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;

(c) Conducted by a judge who might make a ruling on the case; or

(d) Conducted under the auspices of:

(i) A primary or secondary school if all the parties are students, or

(ii) A correctional institution for youth if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 9-804 through 9-806, Idaho Code, do not apply to the mediation or part agreed upon. However, sections 9-804 through 9-806, Idaho Code, apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

History.

I.C., § 9-803, as added by 2008, ch. 35, § 1, p. 68.

STATUTORY NOTES

Prior Laws.

Former § 9-803 was declared null and void. See Prior Laws, § 9-801.

Another former § 9-803, which comprised C.C.P. 1881, § 956; R.S., R.C., & C.L., § 6054; C.S. § 7996; I.C.A., § 16-803, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

Official Comment

1. In general.

The Act is broad in its coverage of mediation, a departure from the common state statutes that apply to mediation in particular contexts, such as court-connected mediation or community mediation, or to the mediation of particular types of disputes, such as worker's compensation or civil rights. *See, e.g.*, Neb. Rev. Stat. Section 48-168 (1993) (worker's compensation); Iowa Code Section 216.15A (1999) (civil rights). Moreover, unlike many mediation privileges, it also applies in some contexts in which the Rules of Evidence are not consistently followed, such as administrative hearings and arbitration.

Whether the Act in fact applies is a crucial issue because it determines not only the application of the mediation privilege but also whether the mediator has the obligations regarding the disclosure of conflicts of interest and, if asked, qualifications in Section 9 [§ 9-809]; is prohibited from making disclosures about the mediation to courts, agencies and investigative authorities in Section 7 [§ 9-807]; and must accommodate requirements regarding accompanying individuals in Section 10 [§ 9-810].

Because of the breadth of the Act's coverage, it is important to delineate its scope with precision. Section 3(a) [(1)] sets forth three different mechanisms that trigger the Act's coverage, and will likely cover most mediation situations that commonly arise. Section 3(b) [(2)] on the other hand, carves out a series of narrow and specific exemptions from the Act's

coverage. Finally, Section 3(c) [(3)] provides a vehicle through which parties who would be mediating in a context covered by Section 3(a) [(1)] may "opt out" of the Act's protections and responsibilities. The central operating principle throughout this Section is that the Act should support, and guide, the parties' reasonable expectations about whether the mediations in which they are participating are included within the scope of the Act.

2. Section 3(a) [(1)]. Mediations covered by Act; triggering mechanisms.

Section 3(a) [(1)] sets forth three conditions, the satisfaction of any one of which will trigger the application of the Act. This triggering requirement is necessary because the many different forms, contexts, and practices of mediation and other methods of dispute resolution make it sometimes difficult to know with certainty whether one is engaged in a mediation or some other dispute resolution or prevention process that employs mediation and related principles. *See, e.g.*, Ellen J. Waxman & Howard Gadlin, *Ombudsmen: A Buffer Between Institutions, Individuals*, 4 Disp. Resol. Mag. 21 (Summer 1998) (describing functions of ombuds, which can at times include mediation concepts and skills); Janice Fleischer & Zena Zumeta, *Group Facilitation: A Way to Address Problems Collaboratively*, 4 Disp. Resol. Mag. 4 (Summer 1998) (comparing post-dispute mediation with pre-dispute facilitation); Lindsay "Peter" White, *Partnering: Agreeing to Work Together on Problems*, 4 Disp. Resol. Mag. 18 (Summer 1998) (describing a common collaborative problem solving technique used in the construction industry). This problem is exacerbated by the fact that unlike other professionals — such as doctors, lawyers, and social workers — mediators are not licensed and the process they conduct is informal. If the intent to mediate is not clear, even a casual discussion over a backyard fence might later be deemed to have been a mediation, unfairly surprising those involved and frustrating the reasonable expectations of the parties. The first triggering mechanism, Section 3(a)(1) [(1)(a)], subject to exceptions provided in 3(b) [(2)], covers those situations in which mediation parties are either required to mediate or referred to mediation by governmental institutions or by an arbitrator. Administrative agencies include those public agencies with the authority to prescribe rules and regulations to administer a statute, as well as the authority to adjudicate

matters arising under such a statute. They include agricultural departments, child protective services, civil rights commissions and worker's compensation boards, to name only a few. Through this triggering mechanism, the formal court-referred mediation that many people associate with mediation is clearly covered by the Act.

Where Section 3(a)(1) [(1)(a)] focuses on publicly referred mediations, the second triggering mechanism, Section 3(a)(2) [(1)(b)], furthers party autonomy by allowing mediation parties and the mediator to trigger the Act by agreeing to mediate in a record that is signed by the parties and by the mediator. A later note by one party that they agreed to mediate would not constitute a record of an agreement to mediate. In addition, the record must demonstrate the expectation of the mediation parties and the mediator that the mediation communications will have a privilege against disclosure.

Yet significantly, these individuals are not required to use any magic words to obtain the protection of the Act. *See Haghighi v. Russian-American Broadcasting Co*., 577 N.W.2d 927 (Minn. 1998). The lack of a requirement for magic words tracks the intent to be inclusive and to embrace the many different approaches to mediation. Moreover, were magic words required, party and mediator expectations of confidentiality under the Act might be frustrated, since a mediation would only be covered by the Act if the institution remembered to include them in any agreement.

The phrase "privileged against disclosure" clarifies the type of expectations that the record must demonstrate tin order to show an expectation of confidentiality in a subsequent legal setting. Mere generalized expectations of confidentiality in a non-legal setting are not enough to trigger the Act if the case does not fit under Sections 3(a)(1) [(1)(a)] or 3(a)(3) [(1)(c)]. Take for example a dispute in a university between the heads of the Spanish and Latin departments that is mediated or "worked out informally" with the assistance of the head of the French department, at the suggestion of the university provost. Such a mediation would not reasonably carry with it party or mediator expectations that the mediation would be conducted pursuant to an evidentiary privilege, rights of disclosure and accompaniment and the other protections and obligations of the Act. Indeed, some of the parties and the mediator may more reasonably expect that the mediation results, and even the underlying discussions, would be disclosed to the university provost, and perhaps communicated

throughout the parties' respective departments and elsewhere on campus. By contrast, however, if the university has a written policy regarding the mediation of disputes that embraces the Act, and the mediation is specifically conducted pursuant to that policy, and the parties agree to participate in mediation in a record signed by the parties, then the parties would reasonably expect that the Act would apply and conduct themselves accordingly, both in the mediation and beyond.

The third triggering mechanism, Section 3(a)(3) [(1)(c)], focuses on individuals and organizations that provide mediation services and provides that the Act applies when the mediation is conducted by one who is held out as a mediator. For example, disputing neighbors who mediate with a volunteer at a community mediation center would be covered by the Act, since the center holds itself out as providing mediation services. Similarly, mediations conducted by a private mediator who advertises his or her services as a mediator would also be covered, since the private mediator holds himself or herself out to the public as a mediator. Because the mediator is publicly held out as a mediator, the parties may reasonably expect mediations they conduct to be conducted pursuant to relevant law, specifically the Act. By including those mediations conducted by private mediators who hold themselves out as mediators, the Act tracks similar doctrines regarding other professions. In other contexts, "holding out" has included making a representation in a public manner of being in the business or having another person make that representation. *See* 18A Am. Jur. 2d Corporations Section 271 (1985).

Mediations can be conducted by ombuds practitioners. *See Standards for the Establishment and Operation of Ombuds Offices* (August 2001). If such a mediation is conducted pursuant to one of these triggering mechanisms, such as a written agreement under Section 3(a)(2) [(1)(b)], it will be protected under the terms of the Act. There is no intent by the Drafters to exclude or include mediations conducted by an ombuds *a priori*. The terms of the Act determine applicability, not a mediator's formal title.

Finally, on the issue of Section 3(a) [(1)] inclusions into the Act, the Drafting Committees discussed whether it should cover the many cultural and religious practices that are similar to mediation and that use a person similar to the mediator, as defined in this Act. On the one hand, many of these cultural and religious practices, like more traditional mediation,

streamline and resolve conflicts, while solving problems and restoring relationships. Some examples of these practices are Ho'oponopono, circle ceremonies, family conferencing, and pastoral or marital counseling. These cultural and religious practices bring richness to the quality of life and contribute to traditional mediation. On the other hand, there are instances in which the application of the Act to these practices would be disruptive of the practices and therefore undesirable. On balance, furthering the principle of self-determination, the Drafting Committees decided that those involved should make the choice to be covered by the Act in those instances in which other definitional requirements of Section 2 [§ 9-802] are met by entering into an agreement to mediate reflected by a record or securing a court or agency referral pursuant to Section 3(a)(1) [(1)(a)]. At the same time, these persons could opt out the Act's coverage by not using this triggering mechanism. This leaves a great deal of leeway, appropriately, with those involved in the practices.

3. Section 3(b)(1) and (2) [(2)(a) and (b)]. Exclusion of collective bargaining disputes.

Collective bargaining disputes are excluded because of the longstanding, solidified, and substantially uniform mediation systems that already are in place in the collective bargaining context. *See* Memorandum from ABA Section of Labor and Employment Law of the American Bar Association to Uniform Mediation Act Reporters 2 (Jan. 23, 2000) (on file with UMA Drafting Committees); Letter from New York State Bar Association Labor and Employment Law Section to Reporters, Uniform Mediation Act 2-4 (Jan. 21, 2000) (on file with UMA Drafting Committees). This exclusion includes the mediation of disputes arising under the terms of a collective bargaining agreement, as well as mediations relating to the formation of a collective bargaining agreement. By contrast, the exclusion does not include employment discrimination disputes not arising under the collective bargaining agreement as well as employment disputes arising after the expiration of the collective bargaining agreement. Mediations of disputes in these contexts remain within the protections and responsibilities of the Act.

4. Section 3(b)(3) [(2)(c)]. Exclusion of certain judicial conferences.

Difficult issues arise in mediations that are conducted by judges during the course of settlement conferences related to pending litigation, and this

Section excludes certain judicially conducted mediations from the Act. Some have the concern that party autonomy in mediation may be constrained either by the direct coercion of a judicial officer who may make a subsequent ruling on the matter, or by the indirect coercive effect that inherently inures from the parties' knowledge of the ultimate presence of that judge. *See, e.g.,* James J. Alfini, *Risk of Coercion Too Great: Judges Should Not Mediate Cases Assigned to Them For Trial*, 6 Disp. Resol. Mag. 11 (Fall 1999), and Frank E.A. Sander, *A Friendly Amendment*, 6 Disp. Resol. Mag. 11 (Fall 1999).

This concern is further complicated by the variegated nature of judicial settlement conferences. As a general matter, judicial settlement conferences are typically conducted under court or procedural rules that are similar to Rule 16 of the Federal Rules of Civil Procedure, and have come to include a wide variety of functions, from simple case management to a venue for court-ordered mediations. *See* Mont. R. Civ. P., Rule 16(a). In situations in which a part of the function of judicial conferences is case management, the parties hardly have an expectation of confidentiality in the proceedings, even though there may be settlement discussions initiated or facilitated by the judge or judicial officer. In fact, such hearings frequently lead to court orders on discovery and issues limitations that are entered into the public record. In such circumstances, the policy rationales supporting the confidentiality privilege and other provisions of the Act are not furthered.

On the other hand, there are judicially-hosted settlement conferences that for all practical purposes are mediation sessions for which the Act's policies of promoting full and frank discussions between the parties would be furthered. *See* generally Wayne D. Brazil, *Hosting Settlement Conferences: Effectiveness in the Judicial Role*, 3 Ohio St. J. on Disp. Resol. 1 (1987); Carrie Menkel-Meadow, *For and Against Settlement: Uses and Abuses of the Mandatory Settlement Conference*, 33 UCLA L. Rev. 485 (1985).

The Act recognizes the tension created by this wide variety of settlement functions by drawing a line with regard to those conferences that are covered by the Act and those that are not covered by the Act. The Act excludes those settlement conferences in which information from the mediation is communicated to a judge with responsibility for the case. This is consistent with the prohibition on mediator reports to courts in Section 7 [§ 9-807]. The term "judge" in Section 3(b)(3) [(2)(c)] includes magistrates,

special masters, referees, and any other persons responsible for making rulings or recommendations on the case. However, the Act does not apply to a court mediator, or a mediator who contracts or volunteers to mediate cases for a court because they may not make later rulings on the case. Similarly mediations conducted by judges specifically and exclusively are assigned to mediate cases, so-called "buddy judges," and retired judges who return to mediate cases do not fall within the Section 3(b)(3) [(2)(c)] exemption because such mediators do not make later rulings on the case.

Local rules are usually not recognized beyond the court's jurisdiction, and may not provide assurance of confidentiality if the mediation communications are sought in another jurisdiction, and if the jurisdiction does not permit recognize privilege by local rule.

5. Section 3(b)(4)(A) [(2)(d)(i)]. Exclusion of peer mediation.

The Act also exempts mediations between students conducted under the auspices of school programs because the supervisory needs of schools toward students, particularly in peer mediation, may not be consistent with the confidentiality provisions of the Act. For example, school administrators need to be able to respond to, and in a proceeding verify, legitimate threats to student safety or domestic violence that may surface during a mediation between students. *See* Memorandum from ABA Section of Dispute Resolution to Uniform Mediation Act Reporters (Nov. 15, 1999) (on file with UMA Drafting Committees). The law has "repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 508 (1969), *citing Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) and *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923).

This exemption does not include mediations involving a teacher, parent, or other non-student as such an exemption might preclude coverage of truancy mediation and other mediation sessions for which the privilege is pertinent.

6. Section 3(b)(4)(B) [(2)(d)(ii)]. Exclusion of correctional institutions for youth.

The Act also exempts programs involving youths at correctional institutions if the mediation parties are all residents of the institution. This is to facilitate and encourage mediation and conflict prevention and resolution techniques among those juveniles who have well-documented and profound needs in those areas. Kristina H. Chung, *Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails*, 66 Ind. L.J. 999, 1021 (1991). Exempting these programs serves the same policies as are served by the peer mediation exclusion for non-incarcerated youths. The Drafters do not intend to exclude cases where at least one party is not a resident, such as a class action suit against a non-resident in which the parties mediate or attempt to mediate the case.

7. Section 3(c) [(3)]. Alternative of non-privileged mediation.

This Section allows the parties to opt for a non-privileged mediation or mediation session by mutual agreement, and furthers the Act's policy of party self-determination. If the parties so agree, the privilege sections of the Act do not apply, thus fulfilling the parties reasonable expectations regarding the confidentiality of that mediation or session. For example, parties in a sophisticated commercial mediation, who are represented by counsel, may see no need for a privilege to attach to a mediation or session, and may by express written agreement "opt out" of the Act's privilege provisions. Similarly, parties may also use this option if they wish to rely on, and therefore use in evidence, statements made during the mediation. It is the parties rather than the mediator who make this choice, although a mediator could presumably refuse to mediate a mediation or session that is not covered by this Act. Even if the parties do not agree in advance, the parties, mediator, and all nonparty participants can waive the privilege pursuant to Section 5. In this instance, however, the mediator and other participants can block the waiver in some respects.

If the parties want to opt out, they should inform the mediators or nonparty participants of this agreement, because without actual notice, the privileges of the Act still apply to the mediation communications of the persons who have not been so informed until such notice is actually received. Thus, for example, if a nonparty participant has not received notice that the opt-out has been invoked, and speaks during a mediation, that mediation communication is privileged under the Act. If, however, one of the parties or the mediator tells the nonparty participant that the opt-out

has been invoked, the privilege no longer attaches to statements made after the actual notice has been provided, even though the earlier statements remain privileged because of the lack of notice.

8. Other scope issues.

The Act would apply to all mediations that fit the definitions of mediation by a mediator unless specifically excluded by the State adopting the Act. For example, a State may want to exclude international commercial conciliation, which is covered by specific statute in some States. *See, e.g.*, N.C. Gen. Stat. Section 1-567.60 (1991); Cal. Civ. Pro. Section 1297.401 (1988); Fla. Stat. Ann. Section 684.10 (1986).

§ 9-804. Privilege against disclosure — Admissibility — Discovery. —

(1) Except as otherwise provided in section 9-806, Idaho Code, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 9-805, Idaho Code.

(2) In a proceeding, the following privileges apply: (a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

History.

I.C., § 9-804, as added by 2008, ch. 35, § 1, p. 68.

STATUTORY NOTES

Prior Laws.

Former § 9-804 was declared null and void. See Prior Laws, § 9-801.

Another former § 9-804, which comprised C.C.P. 1881, § 957; R.S., R.C., & C.L., § 6055; C.S., § 7997; I.C.A., § 16-804; am. 1943, ch. 74, § 1, p. 156; am 1969, ch. 126, § 3, p. 388, was repealed by S.L. 1975, ch. 242, § 1.

Official Comment

1. In general.

Sections 4 through 6 [§§ 9-804 through 9-806] set forth the Uniform Mediation Act's general structure for protecting the confidentiality of mediation communications against disclosure in later legal proceedings. Section 4 [this section] sets forth the evidentiary privilege, which provides that disclosure of mediation communications generally cannot be compelled in designated proceedings or discovery and results in the exclusion of these communications from evidence and from discovery if requested by any party or, for certain communications, by a mediator or nonparty participant as well, unless within an exception delineated in Section 6 [§ 9-806] applies or the privilege is waived under the provisions of Section 5 [§ 9-805]. It further delineates the fora in which the privilege may be asserted. The term "proceeding" is defined in Section 2(7) [§ 9-802(7)]. The provisions of Sections 4-6 [§§ 9-804 through 9-806] may not be expanded by the agreement of the parties, but the protections may be waived under Section 5 [§ 9-805] or under Section 3(c) [§ 9-803(3)].

2. The mediation privilege structure.

a. Rationale for privilege.

Section 4(b) [(2)] grants a privilege for mediation communications that, like other communications privileges, allows a person to refuse to disclose and to prevent other people from disclosing particular communications. *See generally* Strong, *supra*, at Section 72; *Developments in the Law — Privileged Communications*, 98 Harv. L. Rev. 1450 (1985). The Drafters considered several other approaches to mediation confidentiality — including a categorical exclusion for mediation communications, the extension of evidentiary settlement discussion rules to mediation, and mediator incompetency. Upon exhaustive study and consideration, however, each of these mechanisms proved either overbroad in that they failed to fairly account for interests of justice that might occasionally outweigh the importance of mediation confidentiality (categorical exclusion and mediator incompetency), underbroad in that they failed to meet the reasonable needs of the mediation process or the reasonable expectations of the parties in the mediation process (settlement discussions), or under-inclusive in that they failed to provide protection for all of those involved in the mediation process (mediator incompetency).

The Drafters ultimately settled on the use of the privilege structure, the primary means by which communications are protected at law, an approach that is narrowly tailored to satisfy the legitimate interests and expectations of participants in mediation, the mediation process, and the larger system of justice in which it operates. The privilege structure also provides greater certainty in judicial interpretation because of the courts' familiarity with other privileges, and is consistent with the approach taken by the overwhelming majority of legislatures that have acted to provide broad legal protections for mediation confidentiality. Indeed, of the 25 States that have enacted confidentiality statutes of general application, 21 have plainly used the privilege structure. Ariz. Rev. Stat. Ann. Section 12-2238 (1993); Ariz. Rev. Stat. Ann. Section 16-7-206 (1997); Iowa Code Section 679C.2 (1998); Kan. Stat. Ann. Section 60-452 (1964); La. Rev. St. Ann. Section 9:4112 (1997); Me. R. Evid. Section 408 (1997); Mass. Gen. Laws ch. 233, Section 23C (1985); Mont. Code Ann. Section 26-1-813 (1999); Nev. Rev. Stat. Section 48.109(3) (1993); Ohio Rev. Code Ann. Section 2317.023 (1996); Okla. stat. tit. 12, Section 1805 (1983); Or. Rev. Stat. Ann. Section 36.220 (1997); 42 Pa. Cons. Stat. Ann. Section 5949 (1996) (general); R.I. Gen. Laws Section 9-19-44 (1992); S.D. Codified Laws Section 19-13-32 (1998); Tex. Civ. Prac. & Rem. Code Section 154.053 (c) (1999); Utah Code Ann. Section 30-3-38(4) (2000); Va. Code Ann. Section 8.01-576.10 (1994); Wash. Rev. Code Section 5.60.070 (1993); Wis. Stat. Section 904.085(4)(a) (1997); Wyo. Stat. Section 1-43-103 (1991). At least one other has arguably used the privilege structure: *See Olam v. Congress Mortgage Co*., 68 F. Supp. 2d 1110 (N.D. Cal. 1999) (treating Cal. Evid. Code Section 703.5 (1994) and Cal. Evid. Code Section 1119, 1122 (1997) as a privilege).

That these privilege statutes also tend to be the more recent of mediation confidentiality statutory provisions suggests that privilege may also be seen as the more modern approach taken by state legislatures. *See, e.g.,* Ohio Rev. Code. Ann. Section 2317.023 (1996); Fla. Stat. Ann. Section 44.102 (1999); Wash. Rev. Code Ann. Section 5.60.072 (1993); *see generally*, Cole et al., *supra*, at Section 9:10-9:17. Moreover, States have been even more consistent in using the privilege structure for mediation offered by publicly funded entities, such as court-connected and community mediation programs. *See, e.g.,* Ariz. Rev. Stat. Ann. Section 25-381.16 (1977) (domestic court); Ark. Code. Ann. Section 11-2-204 (Arkansas Mediation

and Conciliation Service) (1979); Fla. Stat. Ann. Section 44.201 (publicly established dispute settlement centers) (1998); 710 Ill. Comp. Stat. Section 20/6 (1987) (non-profit community mediation programs); Ind. Code Ann. Section 4-6-9-4 (1988) (Consumer Protection Division); Iowa Code Ann. Section 216.15B (1999) (civil rights commission); Minn. Stat. Ann. Section 176.351 (1987) (workers' compensation bureau); Cal. Evid. Code Section 1119, *et seq*. (1997); Minn. Stat. Ann. Section 595.02 (1996).

The privilege structure carefully balances the needs of the justice system against party and mediator needs for confidentiality. For this reason, legislatures and courts have used the privilege to provide the basis for protection for other forms of professional communications privileges, including attorney-client, doctor-patient, and priest-penitent relationships. *See* Unif. R. Evid. R. 501 (1986); Strong, *supra*, at tit. 5. Congress recently used this structure to provide for confidentiality in the accountant-client context as well. 26 U.S.C. Section 7525 (1998) (Internal Revenue Service Restructuring and Reform Act of 1998). Scholars and practitioners have joined legislatures in showing strong support for a mediation privilege. *See, e.g*., Kirtley, *supra*; Freedman and Prigoff, *supra*; Jonathan M. Hyman, *The Model Mediation Confidentiality Rule*, 12 Seton Hall Legis. J. 17 (1988); Eileen Friedman, *Protection of Confidentiality in the Mediation of Minor Disputes*, 11 Cap. U.L. Rev. 305 (1971); Michael Prigoff, *Toward Candor or Chaos: The Case of Confidentiality in Mediation*, 12 Seton Hall Legis. J. 1 (1988). For a critical perspective, *see generally* Eric D. Green, *A Heretical View of the Mediation Privilege*, 2 Ohio St. J. on Disp. Resol. 1 (1986); Scott H. Hughes, *A Closer Look: The Case for a Mediation Privilege Has Not Been Made*, 5 Disp. Resol. Mag. 14 (Winter 1998).

b. Communications to which the privilege attaches The privilege applies to a broad array of "mediation communications" including some communications that are not made during the course of a formal mediation session, such as those made for purposes of convening or continuing a mediation. *See* Comments to Section 2(2) [§ 9-802(2)] for further discussion.

c. Proceedings at which the privilege may be asserted.

The privilege under Section 4 [this section] applies in most legal "proceedings" that occur during or after a mediation covered by the Act.

See Section 2(7) [§ 9-802(7)]. If the privilege is raised in a criminal felony proceeding, it is subject to a specialized treatment under Section 6(b)(1) [§ 9-806(2)(a)], and the Comments to that Section should be consulted for further clarification.

3. Section 4(a) [(1)]. Description of effect of privilege.

The words "is not subject to discovery or admissible in evidence" in Section 4(a) [(1)] make explicit that a court or other tribunal must exclude privileged communications that are protected under these sections, and may not compel discovery of them. Because the privilege is unfamiliar to many using mediation, this Section provides a description of the effect of the privilege provided in Sections 4(b) [(2)], 5, and 6 [§§ 9-805 and 9-806]. It does not change the reach of the remainder of the Section.

4. Section 4(b) [(2)]. Operation of privilege.

As with other privileges, a mediation privilege operates to allow a person to refuse to disclose and to prevent another from disclosing particular communications. *See generally* Strong, *supra*, at Section 72; *Developments in the Law — Privileged Communications*, 98 Harv. L. Rev. 1450 (1985).

This blocking function is critical to the operation of the privilege. As discussed in more detail below, parties have the greatest blocking power and may block provision of testimony about or other evidence of mediation communications made by anyone in the mediation, including persons other than the mediator and parties. The evidence may be blocked whether the testimony is by another party, a mediator, or any other participant. However, if all parties agree that a party should testify about a party's mediation communications, no one else may block them from doing so, including a mediator or nonparty participant.

Mediators may block their own provision of evidence, including their own testimony and evidence provided by anyone else of the mediator's mediation communications, even if the parties consent. Nonetheless, the parties' consent is required to admit the mediator's provision of evidence, as well as evidence provided by another regarding the mediator's mediation communications.

Finally, a nonparty participant may block evidence of that individual's mediation communication regardless of who provides the evidence and

whether the parties or mediator consent. Once again, nonetheless, the nonparty participant may not provide such evidence if the parties do not consent. This is consistent with fixing the limits of the privilege to protect the expectations of those persons whose candor is most important to the success of the mediation process.

a. The holders of the privilege.

1. In general.

A critical component of the Act's general rule is its designation of the holder — i.e., the person who is eligible to raise and waive the privilege.

This designation brings both clarity and uniformity to the law. Statutory mediation privileges are somewhat unusual among evidentiary privileges in that they often do not specify who may hold and/or waive the privilege, leaving that to judicial interpretation. *See, e.g.,* 710 Ill. Comp. Stat. Section 20/6 (1987) (community dispute resolution centers); Ind. Code Section 20-7.5-1-13 (1987) (university employee unions); Iowa Code Section 679.12 (1985) (general); Ky. Rev. Stat. Ann. Section 336.153 (1988) (labor disputes); 26 Me. Rev. Stat. Ann. Section 1026 (1999) (university employee unions); Mass. Gen. Laws ch. 150, Section 10A (1985) (labor disputes).

Those statutes that designate a holder tend to be split between those that make the parties the only holders of the privilege, and those that also make the mediator a holder. *Compare* Ark. Code Ann. Section 11-2-204 (1979) (labor disputes); Fla. Stat. Ann. Section 61.183 (1996) (divorce); Kan. Stat. Ann. Section 23-605 (1999) (domestic disputes); N.C. Gen. Stat. Section 41A-7(d) (1998) (fair housing); Or. Rev. Stat. Ann. Section 107.785 (1995) (divorce) (providing that the parties are the sole holders) *with* Ohio Rev. Code Ann. Section 2317.023 (1996) (general); Wash. Rev. Code Ann. Section 7.75.050 (1984) (dispute resolution centers (making the mediator an additional holder in some respects).

The Act adopts an approach that provides that both the parties and the mediators may assert the privilege regarding certain matters, thus giving weight to the primary concern of each rationale. *See* Ohio Rev. Code Ann. Section 2317.023 (1996) (general); Wash. Rev. Code Section 5.60.070 (1993) (general). In addition, the Act provides a limited privilege for nonparty participants, as discussed in Section (c) below.

2. Parties as holders.

The mediation privilege of the parties draws upon the purpose, rationale, and traditions of the attorney-client privilege, in that its paramount justification is to encourage candor by the mediation parties, just as encouraging the client's candor is the central justification for the attorney-client privilege. *See* Paul R. Rice, *Attorney Client Privilege in the United States* 2.1-2.3 (2d ed. 1999).

The analysis for the parties as holders appears quite different at first examination from traditional communications privileges because mediations involve parties whose interests appear to be adverse. However, the law of attorney-client privilege has considerable experience with situations in which multiple-client interests may conflict, and those experiences support the analogy of the mediation privilege to the attorney-client privilege. For example, the attorney-client privilege has been recognized in the context of a joint defense in which interests of the clients may conflict in part and yet one may prevent later disclosure by another. *See Raytheon Co. v. Superior Court*, 208 Cal. App. 3d 683, 256 Cal. Rptr. 425 (1989); *United States v. McPartlin*, 595 F.2d 1321 (7th Cir. 1979), *cert denied*, 444 U.S. 898 (1979); *Visual Scene, Inc. v. Pilkington Bros., PLC*, 508 So.2d 437 (Fla. App. 1987); *but see Gulf Oil Corp. v. Fuller*, 695 S.W.2d 769 (Tex. App. 1985) (refusing to apply the joint defense doctrine to parties who were not directly adverse); *see generally* Patricia Welles, *A Survey of Attorney-Client Privilege in Joint Defense*, 35 U. Miami L. Rev. 321 (1981). Similarly, the attorney-client privilege applies in the insurance context, in which an insurer generally has the right to control the defense of an action brought against the insured, when the insurer may be liable for some or all of the liability associated with an adverse verdict. *Desriusseaux v. Val-Roc Truck Corp.*, 230 A.D.2d 704 (N.Y. Supreme Ct. 1996); Paul R. Rice, *Attorney-Client Privilege in the United States*, 4:30-4:38 (2d ed. 1999).

It should be noted that even if the mediator loses the privilege to block or assert a privilege, the parties may still come forward and assert their privilege, thus blocking the mediator who has lost the privilege from providing testimony about the affected mediation. This Section should be read in conjunction with 9(d) below.

3. Mediator as holders.

Mediators are made holders with respect to their own mediation communications, so that they may participate candidly, and with respect to their own testimony, so that they will not be viewed as biased in future mediations, as discussed further in the Reporter's Prefatory Note. As noted above in Section 4(a)(2) above and in commentary to Section 9(d) below, even if the mediator loses the privilege to block or assert a privilege, the parties may still come forward and assert their privilege.

4. Nonparty participants as holders.

In addition, the Act adds a privilege for the nonparty participant, though limited to the communications by that individual in the mediation. *See* 5 U.S.C. Section 574(a)(1). The purpose is to encourage the candid participation of experts and others who may have information that would facilitate resolution of the case. This would also cover statements prepared by such persons for the mediation and submitted as part of it, such as experts' reports. Any party who expects to use such an expert report prepared to submit in mediation later in a legal proceeding would have to secure permission of all parties and the expert in order to do so. This is consistent with the treatment of reports prepared for mediation as mediation communications. *See* Section 2(2) [§ 9-802(2)].

5. Contractual notice of intent to invoke the mediation privilege.

As a practical matter, a person who holds a mediation privilege can only assert the privilege if that person knows that evidence of a mediation communication will be sought or offered at a proceeding. This presents no problem in the usual case in which the subsequent proceeding arises because of the failure of the mediation to resolve the dispute because the mediation party would be one of the parties to the proceeding in which the mediation communications are being sought. To guard against the unusual situation in which a party or mediator may wish to assert the privilege, but is unaware of the necessity, the parties and mediator may wish to contract for notification of the possible use of mediation information, as is a practice under the attorney-client privilege for joint defense consultation. *See* Paul R. Rice, et. al., *Attorney-Client Privilege in the United States* Section 18-25 (2d ed. 1999) (attorney client privilege in context of joint representation).

5. Section 4(c) [(3)]. Otherwise discoverable evidence.

This provision acknowledges the importance of the availability of relevant evidence to the truth-seeking function of courts and administrative agencies, and makes clear that relevant evidence may not be shielded from discovery or admission at trial merely because it is communicated in a mediation. For purposes of the mediation privilege, it is the communication that is made in a mediation that is protected by the privilege, not the underlying evidence giving rise to the communication. Evidence that is communicated in a mediation is subject to discovery, just as it would be if the mediation had not taken place.

There is no "fruit of the poisonous tree" doctrine in the mediation privilege. For example, a party who learns about a witness during a mediation is not precluded by the privilege from subpoenaing that witness. This is a common exemption in mediation privilege statutes, and is also found in Uniform Rule of Evidence 408. *See, e.g.*, Fla. Stat. Ann. Section 44.102 (1999) (general); Minn. Stat. Ann. Section 595.02 (1996) (general); Ohio Rev. Code Ann. Section 2317.023 (1996) (general); Wash. Rev. Code Section 5.60.070 (1993) (general).

§ 9-805. Waiver and preclusion of privilege. — (1) A privilege under section 9-804, Idaho Code, may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 9-804, Idaho Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 9-804, Idaho Code.

History.

I.C., § 9-805, as added by 2008, ch. 35, § 1, p. 69.

STATUTORY NOTES

Prior Laws.

Former § 9-805 was declared null and void. See Prior Laws, § 9-801.

Another former § 9-805, which comprised C.C.P. 1881, § 958; R.S., R.C., & C.L., § 6056; R.S., R.C., & C.L., § 6056; C.S., § 7998; I.C.A., § 16-805, was repealed by S.L. 1975, ch. 242, § 1.

Official Comment

1. Section 5(a) [(1)] and (b) [(2)]. Waiver and preclusion.

Section 5 [this section] provides for waiver of privilege, and for a party, mediator, or nonparty participant to be precluded from asserting the privilege in situations in which mediation communications have been disclosed before the privilege has been asserted. Waiver must be express and either recorded through a writing or electronic record or made orally during specified types of proceedings. These rules further the principle of party autonomy in that mediation participants may generally prefer not to waive their mediation privilege rights. However, there may be situations in which one or more parties may wish to be freed from the burden of privilege, and the waiver provision permits that possibility. *See, e.g., Olam v. Congress Mortgage Co*., 68 F. Supp. 2d 1110, 1131-33 (N.D. Cal. 1999).

Significantly, these provisions differ from the attorney-client privilege in that the mediation privilege does not permit waiver to be implied by conduct. *See* Michael H. Graham, *Handbook of Federal Evidence* Section 511.1 (4th ed. 1996). The rationale for requiring explicit waiver is to safeguard against the possibility of inadvertent waiver, such as through the often salutary practice of parties discussing their dispute and mediation with friends and relatives. In contrast to these settings, there is a sense of formality and awareness of legal rights in all of the proceedings to which the privilege may be waived if the waiver is oral. They generally are conducted on the record, easing the difficulties of establishing what was said.

Read together with Section 4 [§ 9-804], the waiver operates as follows:

- For testimony about mediation communications made by a party, all parties are the holders and therefore all parties must waive the privilege before a party or nonparty participant may testify or provide evidence; if that testimony is to be provided by a mediator, all parties and the mediator must waive the privilege.
- For testimony about mediation communications that are made by the mediator, both the parties and the mediator are holders of the privilege, and therefore both the parties and the mediator must waive the privilege before a party, mediator, or nonparty participant may testify or provide evidence of a mediator's mediation communications.

- For testimony about mediation communications that are made by a nonparty participant, both the parties and the nonparty participants are holders of the privilege and therefore both the parties and the nonparty participant must waive before a party or nonparty participant may testify; if that testimony is to be offered through the mediator, the mediator must also waive.

Earlier drafts included provisions that permitted waiver by conduct, which is common among communications privileges. However, the Drafting Committees deleted those provisions because of concerns that mediators and parties unfamiliar with the statutory environment might waive their privilege rights inadvertently. That created the anomalous situation of permitting the opportunity for one party to blurt out potentially damaging information in the midst of a trial and then use the privilege to block the other party from contesting the truth.

To address this anomaly, the Drafters added Section 5(b) [(2)], a preclusion provision to cover situations in which the parties do not expressly waive the privilege but engage in conduct inconsistent with the assertions of the privilege, and that cause prejudice. As under existing interpretations for other communications privileges, waiver through preclusion would not typically constitute a waiver with respect to all mediation communications, only those related in subject matter. *See generally* Unif. R. Evid. R. 510 and 511 (1986).

Critically, the preclusion provision applies only if the disclosure prejudices another in a proceeding. It is not intended to encompass the casual recounting of the mediation session to a neighbor that is not admissible in court, but would include disclosure that would, absent the exception, allow one party to take unfair advantage of the privilege. For example, if one party's attorney states in court that the other party admitted destroying evidence during mediation, that party should not be able to block the use of testimony to refute that statement later in that proceeding. Such advantage-taking or opportunism would be inconsistent with the policy rationales that support continued recognition of the privilege, while the casual conversation would not. Thus, if Andy and Betty were the parties in a mediation, and Andy affirmatively stated in court that Betty admitted destroying evidence during the mediation, Andy is precluded from asserting that A did not waive the privilege. If Betty decides to waive as well,

evidence of Andy's and Betty's statements during mediation may be admitted.

Analogous doctrines have developed regarding constitutional privileges, *Harris v. New York*, 401 U.S. 222, 224 (1971) (shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances), and the rule of completeness in Rule 106 of the Uniform Rules of Evidence, which states that if one party introduces part of a record, an adverse party may introduce other parts when to do otherwise would be unfair.

Finally, it is worth noting that in arbitration, which is sometimes conducted without an ongoing record, it will be important for waiving parties to ask the arbitrator to note the waiver. Any individual who wants notice that another has received a subpoena for mediation communications or has waived the privilege can provide for notification as a clause in the agreement to mediate or the mediated agreement.

2. Section 5(c) [(3)]. Preclusion for use of mediation to plan or commit crime.

This preclusion reflects a common practice in the States of exempting from confidentiality protection those mediation communications that relate to the ongoing or future commission of a crime, as discussed in the Comments to Section 6(a)(4) [§ 9-806(1)(d)]. However, it narrows the preclusion, thus retaining broader confidentiality, and removes the privilege protection only when an actor uses or attempts to use the mediation itself to further the commission of a crime, rather than lifting the confidentiality protection more broadly to any discussion of crimes. For example, it would preclude gang members from claiming that a meeting to plan a drug deal was really a mediation that would privilege those communications in a later criminal or civil case.

This Section should be read together with Section 6(a)(4) [§ 9-806(1)(d)], which applies to particular communications within a mediation which are used for the same purposes. The two differ on the purpose of the mediation: Section 5(c) [(3)] applies when the mediation itself is used to further a crime, while Section 6(a)(4) [§ 9-806(1)(d)] applies to matters that are being mediated for other purposes but which include discussion of acts or statements that may be deemed criminal in nature. Under Section 5(c) [(3)],

the preclusion applies to all mediation communications because the purpose of the mediation frustrates public policy. Under Section 6(a)(4) [§ 9-806(1)(d)], the preclusion only applies to those mediation communications that have a criminal character; the privilege may still be asserted to block the introduction of other communications made during the mediation. This rationale is discussed more fully in the comments to Section 6(a)(4) [§ 9-806(1)(d)].

§ 9-806. Exceptions to privilege. — (1) There is no privilege under section 9-804, Idaho Code, for a mediation communication that is:

(a) In an agreement evidenced by a record signed by all parties to the agreement; (b) Available to the public under chapter 1, title 74, Idaho Code, or made during a session of a mediation which is open, or is required by law to be open, to the public; (c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence; (d) Intentionally used to plan a crime, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity; (e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator; (f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant or representative of a party based on conduct occurring during a mediation; or (g) Sought or offered to prove or disprove abuse, neglect, abandonment or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the mediation.

(2) There is no privilege under section 9-804, Idaho Code, if a court, administrative agency or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in: (a) A court proceeding involving a felony or misdemeanor; or (b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for

the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

History.

I.C., § 9-806, as added by 2008, ch. 35, § 1, p. 69; am. 2015, ch. 141, § 9, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 9-806 was declared null and void. See Prior Laws, § 9-801.

Another former § 9-806, which comprised C.C.P. 1881, § 959; R.S., R.C., & C.L., § 6057; C.S., § 7999; I.C.A, § 16-806, was repealed by S.L. 1975, ch. 242, § 1.

Amendments.

The 2015 amendment, by ch. 141, substituted "chapter 1, title 74" for "sections 9-337 through 9-347" in paragraph (1)(b).

Official Comment

1. In general.

This Section articulates specific and exclusive exceptions to the broad grant of privilege provided to mediation communications in Section 4 [§ 9-804]. As with other privileges, when it is necessary to consider evidence in order to determine if an exception applies, the Act contemplates that a court will hold an in camera proceeding at which the claim for exemption from the privilege can be confidentially asserted and defended. *See, e.g.,* Rinaker v. Superior Court, 74 Cal. Rptr. 2d 464, 466 (Ct. App. 1998); *Olam v. Congress Mortgage Co.*, 68 F. Supp. 2d 1110, 1131-33 (N.D. Cal. 1999) (discussing whether an in camera hearing is necessary).

The exceptions in Section 6(a) [(1)] apply regardless of the need for the evidence because society's interest in the information contained in the mediation communications may be said to categorically outweigh its

interest in the confidentiality of mediation communications. In contrast, the exceptions under Section 6(b) [(2)] would apply only in situations where the relative strengths of society's interest in a mediation communication and mediation participant interest in confidentiality can only be measured under the facts and circumstances of the particular case. The Act places the burden on the proponent of the evidence to persuade the court in a non-public hearing that the evidence is not otherwise available, that the need for the evidence substantially outweighs the confidentiality interests and that the evidence comes within one of the exceptions listed under Section 6(b) [(2)]. In other words, the exceptions listed in 6(b) [(2)] include situations that should remain confidential but for overriding concerns for justice.

2. Section 6(a)(1) [(1)(a)]. Record of an agreement.

This exception would permit evidence of a signed agreement, such as an agreement to mediate, an agreement regarding how the mediation should be conducted — including whether the parties and mediator may disclose outside of proceedings, or, more commonly, written agreements memorializing the parties' resolution of the dispute. The exception permits such an agreement to be introduced in a subsequent court proceeding convened to determine whether the terms of that settlement agreement had been breached.

The words "agreement evidenced by a record" and "signed" refer to written and executed agreements, those recorded by tape recorded and ascribed to by the parties on the tape, and other electronic means to record and sign, as defined in Sections 2(9) and 2(10) [§ 9-802(9) and (10)]. In other words, a participant's notes about an oral agreement would not be a signed agreement. On the other hand, the following situations would be considered a signed agreement: a handwritten agreement that the parties have signed, an e-mail exchange between the parties in which they agree to particular provisions, and a tape recording in which they state what constitutes their agreement.

Written agreements are commonly excepted from mediation confidentiality protections, permitting the Act to embrace current practices in a majority of States. *See* Ariz. Rev. Stat. Ann. Section 12-2238 (1993); Cal. Evid. Code Section 1120(1) (1997) (general); Cal. Evid. Code Section 1123 (1997) (general); Cal. Gov't Code Section 12980(i) (1998) (housing

discrimination); Colo. Rev. Stat. Section 24-34-506.5 (1993) (housing discrimination); Ga. Code Ann. Section 45-19-36(e) (1989) (fair employment); 775 Ill. Comp. Stat. Section 5/7B-102(E)(3) (1989) (human rights); Ind. Code Section 679.2 (1998) (general); Iowa. Code Ann. Section 216.15(B) (1999) (civil rights); Ky. Rev. Stat. Ann. Section 344.200(4) (1996) (civil rights); La. Rev. Stat. Ann. Section 9:4112(B)(1)(c) (1997) (general); La. Rev. Stat. Ann. Section 51:2257(D) (1998) (human rights); 5 Me. Rev. Stat. Ann. Section 4612(1)(A) (1995) (human rights); Md. Code 1957 Ann. Art. 49(B) Section 28 (1991) (human rights); Mass. Gen. Laws. ch. 151B, Section 5 (1991) (job discrimination); Mo. Rev. Stat. Section 213.077 (1992) (human rights); Neb. Rev. Stat. Section 43-2908 (1993) (parenting act); N.J. Stat. Ann. Section 10:5-14 (1992) (civil rights); Or. Rev. Stat. Ann. Section 36.220(2)(a) (1997) (general); Or. Rev. Stat. Ann. 36.262 (1989) (agricultural foreclosure); 42 Pa. Consol. Stat. Section 5949(b)(1) (1996) (general); Tenn. Code Ann. Section 4-21-303(d) (1996) (human rights); Tex. Gov't Code Ann. Section 2008.057 (1999) (Administrative Procedure Act); Vt. R. Civ. P., Rule 16.3 (1998) (general civil); Va. Code Ann. Section 8.01-576.10 (1994) (general); Va. Code Ann. Section 8.01-581.22 (1988) (general); Wash. Rev. Code Section 5.60.070 (1)(e) and (f) (1993) (general); Wash. Rev. Code Section 26.09.015(3) (1991) (divorce); Wash. Rev. Code Section 49.60.240 (1995) (human rights); W. Va. Code Section 5-11A-11(b)(4) (1992) (fair housing); W. Va. Code Section 6B-2-4(r) (1990) (public employees); Wis. Stat. Section 767.11(12) (1993) (family court); Wis. Stat. Section 904.085(4)(a) (1997) (general).

This exception is noteworthy only for what is not included: oral agreements. The disadvantage of exempting oral settlements is that nearly everything said during a mediation session could bear on either whether the parties came to an agreement or the content of the agreement. In other words, an exception for oral agreements has the potential to swallow the rule of privilege. As a result, mediation participants might be less candid, not knowing whether a controversy later would erupt over an oral agreement. Unfortunately, excluding evidence of oral settlements reached during a mediation session would operate to the disadvantage of a less legally sophisticated party who is accustomed to the enforcement of oral settlements reached in negotiations. Such a person might also mistakenly assume the admissibility of evidence of oral settlements reached in

mediation as well. However, because the majority of courts and statutes limit the confidentiality exception to signed written agreements, one would expect that mediators and others will soon incorporate knowledge of a writing requirement into their practices. *See Vernon v. Acton*, 732 N.E.2d 805 (Ind., 2000) (citing draft Uniform Mediation Act); *Ryan v. Garcia,* 27 Cal. App. 4th 1006, 1012 (1994) (privilege statute precluded evidence of oral agreement); *Hudson v. Hudson*, 600 So.2d 7, 9 (Fla. App. 1992) (privilege statute precluded evidence of oral settlement); Ohio Rev. Code Ann. Section 2317.023 (1996). For an example of a state statute permitting the enforcement of oral agreements under certain narrow circumstances, see Cal. Evid. Code Section 1118, 1124 (1997) (providing that oral agreement must be memorialized in writing within 72 hours).

Despite the limitation on oral agreements, the Act leaves parties other means to preserve the agreement quickly. For example, parties can agree that the mediation has ended, state their oral agreement into the tape recorder and record their assent. *See Regents of the University of California v. Sumner*, 42 Cal. App. 4th 1209, 1212 (1996). This approach was codified in Cal. Evid. Code Section 1118, 1124 (1997).

The parties may still provide that particular settlements agreements are confidential with regard to disclosure to the general public, and provide for sanctions for the party who discloses voluntarily. *See* Stephen A. Hochman, *Confidentiality in Mediation: A Trap for the Unwary*, SB41 ALI-ABA 605 (1995). However, confidentiality agreements reached in mediation, like those in other settlement situations, are subject to the need for evidence and public policy considerations. *See* Cole et al., *supra*, Section 9.23, 9.25.

3. Section 6(a)(2) [(1)(b)]. Mediations open to the public; meetings and records made open by law.

Section 6(a)(2) [(1)(b)] makes clear that the privileges in Section 4 [§ 9-804] do not preempt state open meetings and open records laws, thus deferring to the policies of the individual States regarding the types of meetings that will be subject to these laws. In addition, it provides an exception when the mediation is opened to the public, such as a televised mediation.

This exception recognizes that there should be no after-the-fact confidentiality for communications that were made in a meeting that was

either voluntarily open to the public — such as a workgroup meeting in a federal negotiated rule making that was made open to the general public, even though not required by Federal Advisory Committee Act (FACA) to be open — or was required to be open to the public pursuant to an open meeting law. For example, the Act would provide no privilege if an agency holds a closed meeting but FACA would require that it be open. This exception also applies if a meeting was properly closed but an open record law requires that the meeting summaries or other documents — perhaps even a transcript — be made available under certain circumstances, *e.g.* the Federal Sunshine Act (5 U.S.C. 552b (1995). In this situation, only the records would be excepted from the privilege, however.

4. Section 6(a)(3) [(1)(c)]. Threats of bodily injury or to commit a crime of violence.

The policy rationales supporting the privilege do not support mediation communications that threaten bodily injury or crimes of violence. To the contrary, in cases in which a credible threat has been made disclosure would serve the public interest in safety and the protection of others. Because such statements are sometimes made in anger with no intention to commit the act, the exception is a narrow one that applies only to the threatening statements; the remainder of the mediation communication remains protected against disclosure.

State mediation confidentiality statutes frequently recognize a similar exception. *See* Alaska Stat. Section 47.12.450(e) (1998) (community dispute resolution centers) (admissible to extent relevant to a criminal matter); Colo. Rev. Stat. Section 13-22-307 (1998) (general) (bodily injury); Kan. Stat. Ann. Section 23-605(b)(5) (1999) (domestic relations) (mediator may report threats of violence to court); Or. Rev. Stat. Section 36.220(6) (1997) (general) (substantial bodily injury to specific person); 42 Pa. Cons. St. Ann. Section 5949(2)(I) (1996) (general) (threats of bodily injury); Wash. Rev. Code Section 7.75.050 (1984) (community dispute resolution centers) (threats of bodily injury); Wyo. Stat. Section 1-43-103 (c)(ii) (1991) (general) (future crime or harmful act).

5. Section 6(a)(4) [(1)(d)]. Communications used to plan or commit a crime.

The policies underlying this provision mirror those underlying Section 5(c) [§ 9-805(3)], and are discussed there. This exception applies to particular communications used to plan or commit a crime, whereas Section 5(c) [§ 9-805(3)] applies when the mediation is used for these purposes. It includes communication intentionally used to conceal an ongoing crime or criminal activity.

Almost a dozen States currently have mediation confidentiality protections that contain exceptions related to a commission of a crime. Colo. Rev Stat. Section 13-22-307 (1991) (general) (future felony); Fla. Stat. Ann. Section 723.038 (mobile home parks) (ongoing or future crime or fraud); Iowa Code Section 216.15B (1999) (civil rights); Iowa Code Section 654A.13 (1990) (farmer-lender); Iowa Code Section 679C.2 (1998) (general) (ongoing or future crimes); Kan. Stat. Ann. Section 23-605(b)(3) (1989) (ongoing and future crime or fraud); Kan. Stat. Ann. Section 44-817(c)(3) (1996) (labor) (ongoing and future crime or fraud); Kan. Stat. Ann. Section 75-4332(d)(3) (1996) (public employment) (ongoing and future crime or fraud); 24 Me. Rev. Stat. Ann. Section 2857(2) (1999) (health care) (to prove fraud during mediation); Minn. Stat. Section 595.02(1)(a) (1996) (general); Neb. Rev. Stat. Section 25-2914 (1994) (general) (crime or fraud); N.H. Rev. Stat. Ann. Section 328-C:9(III) (1998) (domestic relations) (perjury in mediation); N.J. Stat Ann. Section 34:13A-16(h) (1997) (workers' compensation) (any crime); N.Y. Lab. Laws Section 702-a(5) (1991) (past crimes) (labor mediation); Or. Rev. Stat. Ann. Section 36.220(6) (1997) (general) (future bodily harm to a specific person); S.D. Codified Laws Section 19-13-32 (1998) (general) (crime or fraud); Wyo. Stat. Ann. Section 1-43-103(c)(ii) (1991) (future crime).

While ready to exempt attempts to commit or the commission of crimes from confidentiality protection, the Drafting Committees declined to cover "fraud" that would not also constitute a crime because civil cases frequently include allegations of fraud, with varying degrees of merit, and the mediation would appropriately focus on discussion of fraud claims. Some state statutes do exempt fraud, although less frequently than they do crime. *See, e.g.*, Fla. Stat. Ann. Section 723.038(8) (1994) (mobile home parks) (communications made in furtherance of commission of crime or fraud); Kan. Stat. Ann. Section 23-605(b)(3) (1999) (domestic relations) (ongoing crime or fraud); Kan. Stat. Ann. Section 44-817(c)(3) (1996) (labor)

(ongoing crime or fraud); Kan. Stat. Ann. Section 60-452(b)(3) (1964) (general) (ongoing or future crime or fraud); Kan. Stat. Ann. Section 75-4332(d)(3) (1996) (public employment) (ongoing or future crime or fraud); Neb. Rev. Stat. Section 25-2914 (1994) (general) (crime or fraud); S.D. Codified Laws Section 19-13-32 (1998) (general) (crime or fraud).

Significantly, this exception does not cover mediation communications constituting admissions of past crimes, or past potential crimes, which remain privileged. Thus, for example, discussions of past aggressive positions with regard to taxation or other matters of regulatory compliance in commercial mediations remain privileged against possible use in subsequent or simultaneous civil proceedings. The Drafting Committees discussed the possibility of creating an exception for the related circumstance in which a party makes an admission of past conduct that portends future bad conduct. However, they decided against such an expansion of this exception because such past conduct can already be disclosed in other important ways. The other parties can warn others, because parties are not prohibited from disclosing by the Act. The Act permits the mediator to disclose if required by law to disclose felonies or if public policy requires.

It is important to emphasize that the Act's limited focus as an evidentiary and discovery privilege, rather than a broader rule of confidentiality means that this privilege provision would not prevent a party from calling the police, or warning someone in danger.

Finally, it should be noted that this exception is intended to prevent the abuse of the privilege as a shield to evidence that might be necessary to prosecute or defend a crime. The Drafters recognize that it is possible that the exception itself could be abused. Such unethical or bad faith conduct would continue to be subject to traditional sanction standards.

6. Section 6(a)(5) [(1)(e)]. Evidence of professional misconduct or malpractice by the mediator.

The rationale behind the exception is that disclosures may be necessary to promote accountability of mediators by allowing for grievances to be brought against mediators, and as a matter of fundamental fairness, to permit the mediator to defend against such a claim. Moreover, permitting complaints against the mediator furthers the central rationale that States

have used to reject the traditional basis of licensure and credentialing for assuring quality in professional practice: that private actions will serve an adequate regulatory function and sift out incompetent or unethical providers through liability and the rejection of service. *See, e.g.,* W. Lee Dobbins, *The Debate Over Mediator Qualifications: Can They Satisfy the Growing Need to Measure Competence Without Barring Entry into the Market?*, U. Fla. J. L. & Pub. Pol'y 95, 96-98 (1995).

7. Section 6(a)(6) [(1)(f)]. Evidence of professional misconduct or malpractice by a party or representative of a party.

Sometimes the issue arises whether anyone may provide evidence of professional misconduct or malpractice occurring during the mediation. *See In re Waller*, 573 A.2d 780 (D.C. App. 1990); *see generally* Pamela Kentra, *Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct*, 1997 B.Y.U.L. Rev. 715, 740-751. The failure to provide an exception for such evidence would mean that lawyers and fiduciaries could act unethically or in violation of standards without concern that evidence of the misconduct would later be admissible in a proceeding brought for recourse. This exception makes it possible to use testimony of anyone except the mediator in proceedings at which such a claim is made or defended. Because of the potential adverse impact on a mediator's appearance of impartiality, the use of mediator testimony is more guarded, and therefore protected by Section 6(c) [(3)]. It is important to note that evidence fitting this exception would still be protected in other types of proceedings, such as those related to the dispute being mediated.

Reporting requirements operate independently of the privilege and this exception. Mediators and other are not precluded by the Act from reporting misconduct to an agency or tribunal other than one that might make a ruling on the dispute being mediated, which is precluded by Section 8(a) and (b) [§ 9-807(1) and (2)].

8. Section 6(a)(7) [(1)(g)]. Evidence of abuse or neglect.

An exception for child abuse and neglect is common in domestic mediation confidentiality statutes, and the Act reaffirms these important policy choices States have made to protect their citizens. *See, e.g.*, Iowa.

Code Ann. Section 679c.3(4) (1998) (general); Kan. Stat. Ann. Section 23-605(b)(2) (1999) (domestic relations); Kan. Stat. Ann. Section 38-1522(a) (1997) (general); Kan. Stat. Ann. Section 44-817(c))(2) (1996) (labor); Kan. Stat. Ann. Section 72-5427(e)(2) (1996) (teachers); Kan. Stat. Ann. Section 75-4332(d)(1) (1996) (public employment); Minn. Stat. Ann. Section 595.02(2)(a)(5) (1996) (general); Mont. Code Ann. Section 41-3-404 (1999) (child abuse investigations) (mediator may not be compelled to testify); Neb. Rev. Stat. Section 43-2908 (1993) (parenting act) (in camera); N.H. Rev. Stat. Ann. Section 328-C:9(III)(c) (1998) (marital); N.C. Gen. Stat. Section 7A-38.1(L) (1999) (superior court); N.C. Gen. Stat. Section 7A-38.4(K) (1999) (district courts); Ohio Rev. Code Ann. Section 3109.052(c) (1990) (child custody); Ohio Rev. Code Ann. Section 5123.601 (1988) (mental retardation); Ohio Rev. Code Ann. Section 2317.02 (1998) (general); Or. Rev. Stat. Section 36.220(5) (1997) (general); Tenn. Code Ann. Section 36-4-130(b)(5) (1993) (divorce); Utah Code Ann. Section 30-3-38(4) (2000) (divorce) (mediator shall report); Va. Code Ann. Section 63.1-248.3(A)(10) (2000) (welfare); Wis. Stat. Section 48.981(2) (1997) (social services): Wis. Stat. Section 904.085(4)(d) (1997) (general); Wyo. Stat. Section 1-43-103(c)(iii) (1991) (general). *But see* Ariz. Rev. Stat. Ann. Section 8-807(B) (1998) (child abuse investigations) (rejecting rule of disclosure).

By referring to "child and adult protective services agency," the exception broadens the coverage to include the elderly and disabled if that State has protected them by statute and has created an agency enforcement process. It should be stressed that this exception applies only to permit disclosures in public agency proceedings in which the agency is a party or nonparty participant. The exception does not apply in private actions, such as divorce, because the need for the evidence is not as great as in proceedings brought to protect against abuse and neglect so that the harm can be stopped, and is outweighed by the policy of promoting candor during mediation. For example, in a mediation between Husband and Wife who are seeking a divorce, Husband admits to sexually abusing a child. Husband's admission would not be privileged in an action brought by the public agency to protect the child, but would be privileged in the divorce hearings.

The last bracketed phrases make an exception to the exception to privilege of mediation communications in certain mediations involving

such public agencies. Child protection agencies in many States have created mediation programs to resolve issues that arise because of allegations of abuse. Those advocating the use of mediation in these contexts point to the need for privilege to promote the use of the process, and these alternatives provide it. National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving the Child Abuse and Neglect Court Process*, 1995. These alternatives are bracketed and offered to the states as recommended model provisions because of concerns raised by some mediators of such cases that mediator testimony sometimes can be necessary and appropriate to secure the safety of a vulnerable party in a situation of abuse. *See* Letter from American Bar Association Commission on Mental and Physical Disability Law, November 15, 2000 (on file with Drafting Committees).

The words "child or adult protection" are bracketed so that States using a different term or encouraging mediation of disputes arising from abuse of other protected classes can add appropriate language.

Each state may chose to enact either Alternative A or Alternative B. The Alternative A exception only applies to cases referred by the court or public agency. In this situation, allegations already have been made in an official context and a court has made the determination that settlement of that case is in the public interest by referring it to mediation. In Alternative B exception, no court referral is required. A state enacting Alternative B would be adopting a policy that it is sufficient that the public agency favors settlement of a particular case by its participation in the mediation. [Idaho adopted Alternative B.]

The term "public agency" may have to be modified in a State in which a private agency is charged by law to assume the duties to protect children in these contexts.

9. Section 6(b) [(2)]. Exceptions requiring demonstration of need.

The exceptions under this Section constitute less common fact patterns that may sometimes justify carving an exception, but only when the unique facts and circumstances of the case demonstrate that the evidence is otherwise unavailable, and the need for the evidence outweighs the policies underlying the privilege. Thus, Section 6(b) [(2)] effectively places the burden on the proponent to persuade the court on these points. The evidence will not be disclosed absent a finding on these points after an in camera

hearing. Further, under Section 6(d) [(4)] the evidence will be admitted only for that limited purpose.

10. Section 6(b)(1) [(2)(a)]. Felony and misdemeanors.

As noted in the commentary to Section 6, point 5, the Act affords more specialized treatment for the use of mediation communications in subsequent felony proceedings, which reflects the unique character, considerations, and concerns that attend the need for evidence in the criminal process. States may also wish to extend this specialized treatment to misdemeanors, and the Drafters offer appropriate model language for states in that event.

Existing privilege statutes are silent or split as to whether they apply only to civil proceedings, apply also to some juvenile or misdemeanor proceedings, or apply as well to all criminal proceedings. The split among the States reflects clashing policy interests. One the one hand, mediation participants operating under the benefit of a privilege might reasonably expect that statements made in mediation would not be available for use in a later felony prosecution. The candor this expectation promotes is precisely that which the mediation privilege seeks to protect. It is also the basis upon which many criminal courts throughout the country have established victim-offender mediation programs, which have enjoyed great success in misdemeanor, and, increasingly, felony cases. *See* generally Nancy Hirshman, *Mediating Misdemeanors: Big Successes in Smaller Cases*, 7 Disp. Resol Mag. 12 (Fall 2000); Mark S. Umbreit, The Handbook of Victim Offender Mediation (2001). Public policy, for example, specifically supports the mediation of gang disputes, and these programs may be less successful if the parties cannot discuss the criminal acts underlying the disputes. Cal. Penal Code Section 13826.6 (1996) (mediation of gang-related disputes); Colo. Rev. Stat. Section 22-25-104.5 (1994) (mediation of gang-related disputes).

On the other hand, society's need for evidence to avoid an inaccurate decision is greatest in the criminal context — both for evidence that might convict the guilty and exonerate the innocent — because the stakes of human liberty and public safety are at their zenith. For this reason, even without this exception, the courts can be expected to weigh heavily the need for the evidence in a particular case, and sometimes will rule that the

defendant's constitutional rights require disclosure. *See Rinaker v. Superior Court*, 74 Cal. Rptr. 2d 464, 466 (Ct. App. 1998) (juvenile's constitutional right to confrontation in civil juvenile delinquency trumps mediator's statutory right not to be called as a witness); *State v. Castellano*, 460 So.2d 480 (Fla. App. 1984) (statute excluding evidence of an offer of compromise presented to prove liability or absence of liability for a claim or its value does not preclude mediator from testifying in a criminal proceeding regarding alleged threat made by one party to another in mediation). *See also Davis v. Alaska*, 415 U.S. 308 (1974).

After great consideration and public comment, the Drafting Committees decided to leave the critical balancing of these competing interests to the sound discretion of the courts to determine under the facts and circumstances of each case. It is drafted in a manner to ensure that both the prosecution and the defense have the same right with respect to evidence, thus assuring a level playing field. In addition, it puts the parties on notice of this limitation on confidentiality.

11. Section 6(b)(2) [(2)(b)]. Validity and enforceability of settlement agreement.

This exception is designed to preserve traditional contract defenses to the enforcement of the mediated settlement agreement that relate to the integrity of the mediation process, which otherwise would be unavailable if based on mediation communications. A recent Texas case provides an example. An action was brought to enforce a mediated settlement. The defendant raised the defense of duress and sought to introduce evidence that he had asked the mediator to permit him to leave because of chest pains and a history of heart trouble, and that the mediator had refused to let him leave the mediation session. *See Randle v. Mid Gulf, Inc.*, No. 14-95-01292, 1996 Tex. App. LEXIS 3451 (Tex App. 1996) (unpublished). The exception might also allow party testimony in a personal injury case that the driver denied having insurance, causing the plaintiff to rely and settle on that basis, where such a misstatement would be a basis for reforming or avoiding liability under the settlement. Under this exception the evidence will not be privileged if the weighing requirements are met. This exception differs from the exception for a record of an agreement in Section 6(a)(1) [(1)(a)] in that Section 6(a)(1) [(1)(a)] only exempts the admissibility of the record of the agreement itself, while the exception in Section 6(b)(2) [(2)

(a)] is broader in that it would permit the admissibility of other mediation communications that are necessary to establish or refute a defense to the validity of a mediated settlement agreement.

12. Section 6(c) [(3)]. Mediator not compelled.

Section 6(c) [(3)] allows the mediator to decline to testify or otherwise provide evidence in a professional misconduct and mediated settlement enforcement cases to protect against frequent attempts to use the mediator as a tie-breaking witness, which would undermine the integrity of the mediation process and the impartiality of the individual mediator. Nonetheless, the parties and others may testify or provide evidence in such cases.

This Section is discussed in the comments to Sections 6(a)(7) [(1)(g)] and 6(b)(2) [(2)(b)]. The mediator may still testify voluntarily if the exceptions apply, or the parties waive their privilege, but the mediator may not be compelled to do so.

13. Section 6(d) [(4)]. Limitations on exceptions.

This Section makes clear the limited use that may be made of mediation communications that are admitted under the exceptions delineated in Sections 6(a) [(1)] and 6(b) [(2)]. For example, if a statement evidencing child abuse is admitted at a proceeding to protect the child, the rest of the mediation communications remain privileged for that proceeding, and the statement of abuse itself remains privileged for the pending divorce or other proceedings.

§ 9-807. Prohibited mediator reports. — (1) Except as otherwise provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court, administrative agency or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

(a) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(b) A mediation communication as permitted under section 9-806, Idaho Code;

(c) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment; or

(d) In mediation governed by Idaho rule of civil procedure 16(j), information permitted under Idaho rule of civil procedure 16(j).

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency or arbitrator.

History.

I.C., § 9-807, as added by 2008, ch. 35, § 1, p. 70.

STATUTORY NOTES

Prior Laws.

Former § 9-807 was declared null and void. See Prior Laws, § 9-801.

Another former § 9-807, which comprised C.C.P. 1881, § 960; R.S., R.C., & C.L., § 6058; C.S., § 8000; I.C.A., § 16-807, was repealed by S.L. 1975, ch. 242, § 1.

Official Comment

1. Section 7. Disclosures by the mediator to an authority that may make a ruling on the dispute being mediated.

Section 7(a) [(1)] prohibits communications by the mediator in prescribed circumstances. In contrast to the privilege, which gives a right to refuse to provide evidence in a subsequent legal proceeding, this Section creates a prohibition against disclosure.

Some states have already adopted similar prohibitions. *See, e.g.*, Cal. Evid. Code Section 1121 (1997); Fla. Stat. Ann. Section 373.71 (1999) (water resources); Tex. Civ. Prac. & Rem. Code Section 154.053 (c) (1999) (general). Disclosures of mediation communications to a judge also could run afoul of prohibitions against ex parte communications with judges. *See* Code of Conduct for Federal Judges, Canon 3(A)(3), 175 F.R.D. 364, 367 (1998); American Bar Association Model Code of Conduct of Judicial Conduct at 9. The purpose of this Section is consistent with the conclusions of seminal reports in the mediation field condemn the use of such reports as permitting coercion by the mediator and destroying confidence in the neutrality of the mediator and in the mediation process. *See* Society for Professionals in Dispute Resolution, *Mandated Participation and Settlement Coercion: Dispute Resolution as it Relates to the Courts* (1991); Center for Dispute Settlement, National Standards for Court-Connected Mediation Programs (D.C. 1992).

Importantly, the prohibition is limited to reports or other listed communications to those who may rule on the dispute being mediated. While the mediators are thus constrained in terms of reports to courts and others that may make rulings on the case, they are not prohibited from reporting threatened harm to appropriate authorities, for example, if learned during a mediation to settle a civil dispute. In this regard, Section 7(b)(3) [(2)(c)] responds to public concerns about clarity and makes explicit what is otherwise implied in the Act, that mediators are not constrained by this Section in their ability to disclose threats to the safety and well being of vulnerable parties to appropriate public authorities, and is consistent with the exception for disclosure in proceedings in Section 6(a)(7) [§ 9-806(1)(g)]. Similarly, while the provision prohibits mediators from making these reports, it does not constrain the parties.

The communications by the mediator to the court or other authority are broadly defined. The provisions would not permit a mediator to communicate, for example, on whether a particular party engaged in "good faith" negotiation, or to state whether a party had been "the problem" in reaching a settlement. Section 7(b)(1) [(2)(a)], however, does permit disclosure of particular facts, including attendance and whether a settlement was reached. For example, a mediator may report that one party did not attend and another attended only for the first five minutes. States with "good faith" mediation laws or court rules may want to consider the interplay between such laws and this Section of the Act.

§ 9-808. Confidentiality. — Unless subject to chapter 1 or 2, title 74, Idaho Code, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

History.

I.C., § 9-808, as added by 2008, ch. 35, § 1, p. 70; am. 2015, ch. 141, § 10, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 9-808 was declared null and void. See Prior Laws, § 9-801.

Amendments.

The 2015 amendment, by ch. 141, substituted "chapter 1 or 2, title 74" for "sections 9-337 through 9-347 or 67-2340 through 67-2347".

Official Comment

The evidentiary privilege granted in Sections 4 to 6 [§§ 9-804 through 9-806] assures party expectations regarding the confidentiality of mediation communications against disclosures in subsequent legal proceedings. However, it is also possible for mediation communications to be disclosed outside of proceedings, for example to family members, friends, business associates and the general public. Section 8 focuses on such disclosures.

a. Party expectations of confidentiality outside of proceedings

Party expectations regarding such disclosures outside of proceedings are complex. On the one hand, parties may reasonably expect in many situations that their mediation communications will not be disclosed to others, that the statements they make in mediation "will stay in the room." This is often the tenor of confidentiality discussions during the initial phases of mediations, when ground rules regarding confidentiality and other issues are being established. See e.g., Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict 156* (2nd ed. 1996);

Kimberly Kovach, *Mediation: Principles and Practice 109* (2nd ed. 2000). Indeed, parties may choose to resolve their disputes through mediation in order to assure this kind of privacy concerning their dispute and related communications. On the other hand, those same parties may also reasonably expect that they can discuss their mediations with spouses, family members and others without the risk of civil liability that might accompany an affirmative statutory duty prohibiting such disclosures. Such disclosures often have salutary effects-such as bringing closure on issues of conflict and educating others about the benefits of mediation or the underlying causes of a dispute.

The tension between these reasonable but contradictory sets of party expectations presented a difficult drafting challenge for the Committees. Confidentiality is viewed by many as the lynchpin of mediation proceedings, and the confidentiality of mediation communications against disclosures outside of proceedings may be as important to the integrity of the mediation process for some as the protection against disclosures of mediation communications in subsequent proceedings that is assured by the privilege.

The Act takes an approach of restraint. In providing an evidentiary privilege, it established statutory law when statutory law is necessary and uniformity is appropriate: the discoverability and admissibility of mediation communications. A statute is necessary in this context because parties by private contract cannot agree to keep evidence from the courts; uniformity is appropriate because it promotes certainty about the treatment of mediation communications in the courts and other formal proceedings, thus allowing the parties to guide their conduct as appropriate.

By contrast, uniformity is not necessary or even appropriate with regard to the disclosure of mediation communications outside of proceedings. In some situations, parties may prefer absolute non-disclosure to any third party, in other situations, parties may wish to permit, even encourage, disclosures to family members, business associates, even the media. These decisions are best left to the good judgment of the parties, to decide what is appropriate under the unique facts and circumstances of their disputes, a policy that furthers the Act's fundamental principle of party self-determination. Such confidentiality agreements are common in law, and are enforceable in courts. See e.g., Doe v. Roe, 93 Misc. 2d 201, 400 N.Y.S.2d

668 (1977); Stephen A. Hochman, *Confidentiality in Mediation: A Trap for the Unwary*, SB41 ALI-ABA 605 (1996); Rogers & McEwen, supra, Section 9.24.

b. Restatement and affirmation of current law and practices

Section 8's [this section's] language "mediation communications are confidential to the extent agreed upon by the parties" restates the general rule in the states regarding the confidentiality of mediation communications outside the context of proceedings: It is a matter of party choice through private contract. However, the language "or provided by other law or rule of this State" also acknowledges that some jurisdictions may have engrafted upon their statutes strong cultural norms discouraging disclosures outside of proceedings, cultural norms that have resulted from consistent practice by trained mediators to establish this ground rule early in the mediation by contractual agreement, and from many professionals' interpretation of state law to impose such a requirement. See e.g., Tex. Civ. Prac. & Rem. Code, Sec. 154.073 (a) (arguably imposing a duty of non-disclosure outside the context of proceedings). This language makes clear that the Act does not preempt current court rules or statutes that may be understood or interpreted to impose a duty of confidentiality outside of proceedings, or otherwise interfere with local customs, practices, interpretations, or understandings regarding the disclosure of mediation communications outside of proceedings.

Significantly, Section 8's [this section's] language "or provided by other law or rule of this State" also puts parties on notice that the parties' capacity to contract for this aspect of confidentiality, while broad, is subject to the limitations of existing State law. This recognizes the important policy choices that the State already has made through its various mechanisms of law. For example, such a contract would be subject to the rule in some states that would permit or require a mediator to reveal information if there is a present and substantial threat that a person will suffer death or substantial bodily harm if the mediator fails to take action necessary to eliminate the threat. See, e.g., *Tarasoff v. Regents of the University of California*, 551 P.2d 334 (Cal. 1976) (en banc) (permitting action against psychotherapist who knows of a patient's dangerousness and fails to warn the potential victim). The mediator in such a case may first wish to secure a determination by a court, in camera, that the facts of the particular case

justify or indeed dictate divulging the information to prevent reasonably certain death or substantial bodily harm. See, for example, ABA Rule 1.6(b)(1) and accompanying commentary; 5 U.S.C. Section 574(a)(4)(C). This result is consistent with the ABA/AAA/SPIDR Model Standards of Conduct for Mediators, and the American Bar Association's revised the Standards of Conduct for Attorneys. In addition, under contract law the courts may make exceptions to enforcement for public policy reasons. See, e.g., *Equal Employment Opportunity Commission v. Astra USA*, 94 F.3d 738 (1st Cir. 1996). Such agreements are typically not enforceable by nonsignatories. They are also not enforceable if they conflict with public records requirements. See, *e.g. Anchorage School Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989); *Pierce v. St. Vrain Valley School District*, 944 P.2d 646 (Colo. Ct. App. Div. 1 1997).

To avoid misunderstandings about the extent of confidentiality, it is wise for mediation participants to consider whether to enter into a confidentiality agreement at the outset of mediation for purposes of guiding their expectations with respect to the disclosure of mediation communications outside of legal proceedings. Even in the absence of such discussions, the privilege for mediation communications within legal proceedings in Section 4 to 7 remains intact, and the signatories of a confidentiality agreement cannot expand the scope of the privilege.

c. Legislative history

Section 8 [this section] was the culmination of efforts in several drafts to understand and manage the reasonable expectations of mediation participants regarding disclosures outside of proceedings. Reflecting deeply felt values among mediators, early drafts were criticized by some in the mediation community for failing to impose an affirmative duty on mediation participants not to disclose mediation communications to third persons outside of the context of the proceedings at which the Section 4 [§ 9-804)] privilege applies.

In several subsequent drafts, the Drafters attempted to establish a comprehensive rule that would prohibit such disclosures, but found it impracticable to do so without imposing a severe risk of civil liability on the many unknowing mediation participants who might discuss their mediations with others for any number of reasons. The Drafters were

deeply concerned about their capacity to develop a truly comprehensive list of legitimate and appropriate exceptions. Some exceptions were obvious, such as for the education and training of mediators, for the monitoring evaluation and improvement of court-related mediation programs, but some were more subtle, such as for the reporting of threats to police and abuse to public agencies — and each draft drew forth more calls for legitimate and appropriate exceptions. As the drafts grew in length and complexity, the Drafters became concerned about the intelligibility and accessibility of the statute, which is particularly important given the important role of non-lawyer mediators and the many people who participate in mediations without counsel or knowledge of the law.

Similarly, efforts to create a simpler rule with fewer exceptions but with greater judicial discretion to act as appropriate on a case-by-case basis to prevent "manifest injustice" also met severe resistance from many different sectors of the mediation community, as well as a number of state bar ADR communities.

In the end, the Drafters ultimately chose to draw a clear line, and to follow the general practice in the states of leaving the disclosure of mediation communications outside of proceedings to the good judgment of the parties to determine in light of the unique characteristics and circumstances of their dispute.

§ 9-809. Mediator's disclosure of conflicts of interest — Background. —

(1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect or create the appearance of affecting the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(2) If a mediator learns any fact described in subsection (1)(a) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under section 9-804, Idaho Code.

(5) Subsections (1), (2) and (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession.

(7) A mediator must be impartial unless, after disclosure of the facts required in subsections (1) and (2) of this section to be disclosed, the parties agree otherwise.

History.

I.C., § 9-809, as added by 2008, ch. 35, § 1, p. 70.

STATUTORY NOTES

Prior Laws.

Former § 9-809 was declared null and void. See Prior Laws, § 9-801.

Official Comment

1. Sections 9(a) [(1)] and 9(b) [(2)]. Disclosure of mediator's conflicts of interest.

a. In general.

This Section provides legislative support for the professional standards requiring mediators to disclose their conflicts of interest. *See, e.g.*, American Arbitration Association, American Bar Association & Society of Professionals in Dispute Resolution, *Model Standards of Conduct for Mediators, Standard III* (1995); *Model Standards of Practice for Family and Divorce Mediation, Standard IV* (2001); *National Standards for Court-Connected Mediation Programs, Standard 8.1(b)* (1992). It is consistent with the ethical obligations imposed on other ADR neutrals. *See* Revised Uniform Arbitration Act (2000) Section 12; Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, Section 2(B) (1985) (required disclosures).

Sections 7(a)(2) and 7(b) [§ 9-807(1)(b) and (2)] make clear that the duty to disclose is a continuing one.

b. Reasonable duty of inquiry

The phrase in Section 9(b)(1) [(1)(a)] "make an inquiry that is reasonable under the circumstances" makes clear that the mediator's burden of inquiry into possible conflicts is not absolute, but rather is one that is consistent with the purpose of the Section: to make the parties aware of any conflict of interest that could lead the parties to believe that the mediator has an interest in the outcome of the dispute. Such disclosure fulfills the reasonable expectations of the parties, and furthers the Act's core principles of party self-determination and informed consent by assuring the parties that they will have sufficient information about the mediator's potential conflicts of interests to make the determination about whether that mediator is acceptable for the dispute at hand.

One may reasonably anticipate many situations in which parties are willing to waive a conflict of interest; indeed, depending upon the dispute, the very fact that a mediator is familiar to both parties may best qualify the mediator to mediate that dispute. That choice, however, properly belongs to the parties after informed consent, and in preserving this autonomy, this provision not only confirms the integrity of the individual mediator, but also supports the integrity of the mediation process by providing a visible, fundamental, and familiar safeguard of public protection.

Critically, the reasonable inquiry language is also intended to convey the Drafters' intent to exclude inadvertent failures to disclose that would result in the loss of the mediator privilege. The duty of reasonable inquiry is specific to each mediation, and such an inquiry always would discover those conflicts that are sufficiently material as to call for disclosure. For example, stock ownership in a company that is a party to an employment discrimination matter that is being mediated would likely be identified under a reasonable inquiry, and should be disclosed to both parties under Section 9(a) [(1)]. On the other hand, less substantial or merely arguable conflicts of interest may not be discoverable upon reasonable inquiry and that may therefore result in inadvertent nondisclosure. In the foregoing hypothetical, for example, the mediator may not be aware, or have any reason to be aware, that he or she has membership in the same country club as an officer or board member of the company. The failure to disclose this arguable conflict would be inadvertent, not a violation of Section 9(a) or (b) [(1) or (2)], and therefore not subject to the loss of privilege sanction in Section 9(d) [(4)].

The reasonable inquiry also depends on the circumstances. For example, if a small claims court refers parties to a mediator who has a volunteer attorney standing in court, the parties would not expect that mediator to check on conflicts with all lawyers in the mediator's firm in the five minutes between referral and mediation. Presumably, only conflicts known by the mediator would affect that mediation in any event.

c. Conflicts that must be disclosed

Section 9 (a)(1) and 9(b) [(1)(a) and (2)] expressly state that mediators should disclose financial or personal interests, and personal relationships, that a "reasonable person would consider likely to affect the impartiality of

the mediator." One aspect of this would be whether the conflict is material to the matter being mediated. Further, the Drafters chose the word "including" to convey their intent that these types of conflicts not be viewed as an exclusive list of that which must be disclosed.

Again, the standard is one of reasonableness under the circumstances, given the Sections purpose in furthering informed consent and the integrity of the mediation process.

It should be stressed that the Drafters recognize that it is sometimes difficult for the practitioner to know precisely what must be disclosed under a reasonableness standard. Prudence, professional reputation, and indeed common practice would compel the practitioner to err on the side of caution in close cases. Moreover, mediators with full-time or otherwise extensive mediation practices may wish to avail themselves of the common technologies used by law firms to identify conflicts of interest. Finally in this regard, it is worth underscoring that this duty to disclose conflicts of interest is intended to further party self-determination and the integrity of the mediation process, and is not intended to provide a cover or vehicle for bad faith litigation tactics, such as fishing expeditions into a mediator's professional or personal background. Such conduct would continue to be subject to traditional sanction standards.

2. Section 9(c) [(3)] and (f) [(6)]. Disclosure of mediator's qualifications

Sections 9(c) [(3)] and (f) [(6)] address the issue of mediator qualifications, and, like the conflicts of interest provision, are intended to further principles of party autonomy and informed consent. In particular, these Sections do not require mediators to have certain qualifications, specifically including a law degree; nor, unlike the conflicts of interest provision, do they impose an affirmative duty on the mediator to disclose qualifications. Rather, the mediator's obligation is responsive: if a party asks for the mediator's qualifications to mediate a particular dispute, the mediator must provide those qualifications.

In some situations, the parties may make clear that they care about the mediator's substantive knowledge of the context of the dispute, or that they want to know whether the mediator in the past has used a purely facilitative mediation process or instead an evaluative approach. *Compare* Leonard L.

Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 Harv. Negotiation L. Rev. 7 (1996) *with* Joseph B. Stulberg, *Facilitative Versus Evaluative Mediator Orientations: Piercing The "Grid" Lock*, 24 Fla. State Univ. L. Rev. 985 (1997); *see generally Symposium*, Fla. State Univ. L. Rev. (1997). Experience mediating would seem important to some parties, and indeed this is one aspect of the mediator's background that has been shown to correlate with effectiveness in reaching settlement. *See, e.g.*, Jessica Pearson & Nancy Thoennes, *Divorce Mediation Research Results, in Divorce Mediation: Theory and Practice*, 429, 436 (Folberg & Milne, eds., 1988); Roselle L. Wissler, *A Closer Look at Settlement Week*, 4 Disp. Resol. Mag. 28 (Summer 1998).

It must be stressed that the Act does not establish mediator qualifications. No consensus has emerged in the law, research, or commentary as to those mediator qualifications that will best produce effectiveness or fairness. As clarified by Section 9(f) [(6)], mediators need not be lawyers. In fact, the American Bar Association Section on Dispute Resolution has issued a statement that "dispute resolution programs should permit all individuals who have appropriate training and qualifications to serve as neutrals, regardless of whether they are lawyers." ABA Section of Dispute Resolution Council Res., April 28, 1999.

At the same time, the law and commentary recognize that the quality of the mediator is important and that the courts and public agencies referring cases to mediation have a heightened responsibility to assure it. *See generally* Cole et al., *supra*, Section 11.02 (discussing laws regarding mediator qualifications); Center for Dispute Settlement, *National Standards for Court-Connected Mediation Programs* (1992); Society for Professionals in Dispute Resolution Commission on Qualifications, *Qualifying Neutrals: The Basic Principles* (1989); Society for Professionals in Dispute Resolution Commission on Qualifications, *Ensuring Competence and Quality in Dispute Resolution Practice* (1995); Society for Professionals in Dispute Resolution, *Qualifying Dispute Resolution Practitioners: Guidelines for Court-Connected Programs* (1997).

The decision of the Drafting Committees against prescribing qualifications should not be interpreted as a disregard for the importance of qualifications. Rather, respecting the unique characteristics that may qualify

a particular mediator for a particular mediation, the silence of the Act reflects the difficulty of addressing the topic in a uniform statute that applies to mediation in a variety of contexts. Qualifications may be important, but they need not be uniform. It is not the intent of the Act to preclude a statute, court or administrative agency rule, arbitrator or contract between the parties from requiring that a mediator have a particular background or profession; those decisions are best made by individual states, courts, governmental entities, and parties.

3. Section 9(d) [(4)]. Violation of disclosure [and impartiality] requirements.

a. In general

This provision makes clear that the mediator who violates the disclosure requirements of Sections 9(a) or (b) [(1) or (2)] may not refuse to disclose a mediation communication or prevent another person from disclosing a mediation communication of the mediator, pursuant to Section 4(b)(2) [§ 9-804(2)(b)]. If a state adopts the impartiality provision of Section 9(f) [(6)], a violation of that provision triggers the same denial of the privilege. Only those states adopting the impartiality provision should adopt the second bracket [(a), (b), or (g)]; all other states should adopt the first bracket [(a) or (b)]. [Idaho adopted the first bracket.] States that do not want to adopt either bracketed option, and prefer other remedies for violations of the duties prescribed in Sections 9(a) and (b) [and 9(g)], such as roster delisting, civil, criminal, or other sanctions, would simply delete the current language of 9(d) [(4)], and insert as the new 9(d) [(4)] appropriate reference to such preferred alternative remedy.

b. Only mediator privilege lost; party, nonparty participant privileges remain intact

Crucially, while the mediator who fails to comply with the Act's conflicts of interest and impartiality requirements loses the privilege for purpose of that mediation, the parties and the nonparty participants retain their privilege for that mediation. Thus, in a situation in which the mediator has lost the privilege, for example, the parties may still come forward and assert their privilege, thus blocking the mediator who has lost the privilege from providing testimony about the affected mediation. Similarly, to the extent the mediator's purported testimony would be about the mediation

communications of a nonparty participant, the nonparty participant may block the testimony if the mediator has lost the privilege.

The only person prejudiced by the violation is the mediator who failed to disclose a conflict [or who had a bias in the dispute], and as such the loss of privilege provides an important but narrowly tailored measure of accountability. Section 9(d) [(4)] makes clear that mediators cannot avoid testifying in such situations.

The Drafters considered other sanctions for mediators who failed to disclose conflicts [or who were partial], such as criminal and civil sanctions. However, it rejected specifically providing for those options because of the possibility of discouraging people from becoming mediators, and because the loss of privilege sanction was deemed to be tailored to the precise harm caused by the violation.

c. Practical operation

The loss of privilege in this narrow context raises important practical questions with regard to how a party or a nonparty participant would know that the mediator may lose, or has lost, the privilege with respect to a particular mediation. This is significant because they should have the opportunity to decide whether they wish to assert their own privilege and block the mediator's testimony to the extent permitted by the privilege, or to permit the testimony, consistent with the Act's underlying premises of party autonomy and informed consent.

As a practical matter, notice is not likely to be a concern in the typical case in which the mediation communications evidence is being sought in an action to set aside the mediated settlement agreement, or in a professional misconduct proceeding or action, arising out of the conflict of interest. The parties would be aware of the loss of privilege, and indeed, the loss of the privilege is consistent with the exceptions permitting such testimony in cases to establish the validity of the settlement agreement or professional misconduct. *See* Sections 6(a)(6) and 6(b)(2) [§ 9-806(1)(f) and (2)(b)].

However, in the more remote situation in which these exceptions would not be applicable, and the mediator's testimony is sought under a claim that the privilege has been lost by virtue of the mediator's failure to disclose a conflict of interest, the notice issue becomes more problematic. It may be

expected that the mediator would give notice to the other mediation participants who may be affected by such a request. It may also be expected under usual customs and practices that the party seeking the privileged testimony would move the matter before a court and provide notice to all interested persons who would have the right to assert the privilege. For a challenge to the mediation privilege, those interested parties would be the mediator, parties, and nonparty participants. In any event, mediation participants are advised to consider including notice provisions in their agreements to mediate that call for participants who receive subpoenas for privileged testimony to provide notice to the other participants of such a request.

As with the exceptions recognized under this Act, the Act anticipates that the question of whether a privilege has been lost would typically be decided by courts in an in camera proceeding that would preserve the confidentiality of the mediation communications that may be necessary to establish the validity of the loss of privilege claim. The materiality of the failure to disclose is not likely to be in issue in the more common situations in which the mediator's testimony is being sought in a case other than to establish the invalidity of a mediated settlement agreement or professional misconduct arising from the failure to disclose. However, in those rare other situations in which the mediator's testimony is being sought, the proponent of the evidence may also need to establish the materiality of the failure to disclose.

4. Section 9(e) [(5)]. Individual acting as a judge.

This Section averts a legislative prohibition on certain judicial actions, and defers to other more appropriate regulation of the judiciary. It extends the principles embodied in Section 3(b)(3) [§ 9-803(2)(c)], which places mediations conducted by judges who might make a ruling on the case outside the scope of the Act. The rationales described therein apply with equal force in this context.

5. Section 9(g) [(7)]. Mediator impartiality.

"Impartiality" has been equated with "evenhandedness" in the Model Standards of Practice approved by the American Bar Association, American Association of Arbitrators, and the Society of Professionals in Dispute Resolution (now Association for Conflict Resolution). The mediator's employment situation may present difficult issues regarding impartiality. A

mediator who is employed by one of the parties is not typically viewed as impartial, especially if the person who mediates also represents a party. In the representation situation, the mediator's overriding responsibility is toward a single party. For example, the parties' legal counsel would not be an impartial mediator. Ombuds often are obligated by ethical standards to be impartial, although they are employed by one of the parties.

While few would argue that it is almost always best for mediators to be impartial as a matter of practice, including such a requirement into a uniform law drew considerable controversy. Some mediators, reflecting a deeply and sincerely felt value within the mediation community that a mediator not be predisposed to favor or disfavor parties in dispute, persistently urged the Drafters to enshrine this value in the Act; for these, the failure to include the notion of impartiality in the Act would be a distortion of the mediation process. Other mediators, service providers, judges, mediation scholars, however, urged the Drafters not to include the term "impartiality" for a variety of reasons.

At least three are worth stressing. One pressing concern was that including such a statutory requirement would subject mediators to an unwarranted exposure to civil lawsuits by disgruntled parties. In this regard, mediators with a more evaluative style expressed concerns that the common practice of so-called "reality checking" would be used as a basis for such actions against the mediator. A second major concern was over the workability of such a statutory requirement. Scholarly research in cognitive psychology has confirmed many hidden but common biases that affect judgment, such as attributional distortions of judgment and inclinations that are the product of social learning and professional culturation. *See generally*, Daniel Kahneman and Amos Tversky, *Choices, Values, and Frames* (2000); Scott Plous, *The Psychology of Judgment and Decision Making* (1993). Similarly, mediators in certain contexts sometimes have an ethical or felt duty to advocate on behalf of a party, such as long-term care ombuds in the health care context. Third, some parties seek to use a mediator who has a duty to be partial in some respects — such as a domestic mediator who is charged by law to protect the interests of the children. It has been argued that such mediations should still be privileged.

For these and other reasons, the Drafting Committees determined that impartiality, like qualifications, was an issue that was important but that did

not need to be included in a uniform law. Rather, out of regard for the gravity of the issue, the Drafting Committees determined that it was enough to flag the issue for states to consider at a more local level, and to provide model language that may be helpful to states wishing to pursue the issue.

If this Section is adopted, the state should also choose the bracketed option with this Section in Section (d) [(4)], so that a mediator who is not impartial is precluded from asserting the privilege. Section (e) [(5)] makes this inapplicable to an individual acting as a judge, whose impartiality is governed by judicial canons.

§ 9-810. Participation in mediation. — Unless otherwise provided by court rule or order, an attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

History.

I.C., § 9-810, as added by 2008, ch. 35, § 1, p. 71.

STATUTORY NOTES

Prior Laws.

Former § 9-810 was declared null and void. See Prior Laws, § 9-801.

Official Comment

The fairness of mediation is premised upon the informed consent of the parties to any agreement reached. *See Wright v. Brockett*, 150 Misc. 2d 1031 (1991) (setting aside mediation agreement where conduct of landlord/tenant mediation made informed consent unlikely); *see generally*, Joseph B. Stulberg, *Fairness and Mediation*, 13 Ohio St. J. on Disp. Resol. 909, 936-944 (1998); Craig A. McEwen, Nancy H. Rogers, Richard J. Maiman, *Bring in the Lawyers: Challenging the Dominant Approaches to Ensuring Fairness in Divorce Mediation*, 79 Minn. L. Rev. 1317 (1995). Some statutes permit the mediator to exclude lawyers from mediation, resting fairness guarantees on the lawyer's later review of the draft settlement agreement. *See, e.g.*, Cal. Fam. Code Section 3182 (1993); McEwen, et al., 79 Minn. L. Rev., *supra*, at 1345-1346. At least one bar authority has expressed doubts about the ability of a lawyer to review an agreement effectively when that lawyer did not participate in the give and take of negotiation. Boston Bar Ass'n, Op. 78-1 (1979). Similarly, concern has been raised that the right to bring counsel might be a requirement of constitutional due process in mediation programs operated by courts or administrative agencies. Richard C. Reuben, *Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice*, 47 UCLA L. Rev. 949, 1095 (April 2000).

Some parties may prefer not to bring counsel. However, because of the capacity of attorneys to help mitigate power imbalances, and in the absence of other procedural protections for less powerful parties, the Drafting Committees elected to let the parties, not the mediator, decide. Also, their agreement to exclude counsel should be made after the dispute arises, so that they can weigh the importance in the context of the stakes involved.

The Act does not preclude the possibility of parties bringing multiple lawyers or translators, as often is common in international commercial and other complex mediations. The Act also makes clear that parties may be accompanied by a designated person, and does not require that person to be a lawyer. This provision is consistent with good practices that permit the *pro se* party to bring someone for support who is not a lawyer if the party cannot afford a lawyer.

Most statutes are either silent on whether the parties' lawyers can be excluded or, alternatively, provide that the parties can bring lawyers to the sessions. *See, e.g.*, Neb. Rev. Stat. Section 42-810 (1997) (domestic relations) (counsel may attend mediation); N.D. Cent. Code Section 14-09.1-05 (1987) (domestic relations) (mediator may not exclude counsel); Okla. Stat. tit. 12, Section 1824(5) (1998) (representative authorized to attend); Or. Rev. Stat. Section 107.600(1) (1981) (marriage dissolution) (attorney may not be excluded); Or. Rev. Stat. Section 107.785 (1995) (marriage dissolution) (attorney may not be excluded); Wis. Stat. Section 655.58(5) (1990) (health care) (authorizes counsel to attend mediation). Several States, in contrast, have enacted statutes permitting the exclusion of counsel from domestic mediation. See Cal. Fam. Code Section 3182 (1993); Mont. Code Ann. Section 40-4-302(3) (1997) (family); S.D. Codified Laws Section 25-4-59 (1996) (family); Wis. Stat. Section 767.11(10)(a) (1993) (family).

As a practical matter, this provision has application only when the parties are compelled to participate in the mediation by contract, law, or order from a court or agency. In other instances, any party or mediator unhappy with the decision of a party to be accompanied by an individual can simply leave the mediation. In some instances, a party may seek to bring an individual whose presence will interfere with effective discussion. In divorce mediation, for example, a new friend of one of the parties may spark new arguments. In these instances, the mediator can make that observation to the

parties and, if the mediation flounders because of the presence of the nonparty, the parties or the mediator can terminate the mediation. The pre-mediation waiver of this right of accompaniment can be rescinded, because the party may not have understood the implication at that point in the process. However, this provision can be waived once the mediation begins. Limitations on counsel in small claims proceedings may be interpreted to apply to the small claims mandatory mediation program. If so, the States may wish to consider whether to provide an exception for mediation conducted within these programs.

The right to accompaniment does not operate to excuse any participation requirements for the parties themselves.

§ 9-811. International commercial mediation. — (1) In this section, "model law" means the model law on international commercial conciliation adopted by the United Nations commission on international trade law on June 28, 2002, and recommended by the United Nations general assembly in a resolution (A/RES/57/18) dated November 19, 2002, and "international commercial mediation" means an international commercial conciliation as defined in article 1 of the model law.

(2) Except as otherwise provided in subsections (3) and (4) of this section, if a mediation is an international commercial mediation, the mediation is governed by the model law.

(3) Unless the parties agree in accordance with section 9-803(3), Idaho Code, that all or part of an international commercial mediation is not privileged, sections 9-804, 9-805 and 9-806, Idaho Code, and any applicable definitions in section 9-802, Idaho Code, also apply to the mediation and nothing in article 10 of the model law derogates from sections 9-804, 9-805 and 9-806, Idaho Code.

(4) If the parties to an international commercial mediation agree under article 1, subsection 7., of the model law that the model law does not apply, this chapter applies.

History.

I.C., § 9-811, as added by 2008, ch. 35, § 1, p. 71.

STATUTORY NOTES

Prior Laws.

Former § 9-811 was declared null and void. See Prior Laws, § 9-801.

Official Comment

1. Varying by Agreement/Choice of Law

This Amendment allows parties to international commercial mediation to take advantage of the privilege protections of the Uniform Mediation Act,

which typically are broader than the evidentiary exclusions of the UNCITRAL Model Law. A number of choices are available to the mediation participants:

(1) *If the participants prefer to have the mediation covered by the privilege protections of the Uniform Mediation Law, which are typically broader than the evidentiary exclusions of the UNCITRAL Model Law:* This is the default situation under this Amendment to the Uniform Mediation Act. This result is reached by reading subsections (a) and (c) [(1) and (3)] together. No additional agreement is necessary.

(2) *If the participants prefer not to have the mediation covered by the provisions of the UNCITRAL Model Act but want the mediation covered by the Uniform Mediation Act:* The parties should agree, pursuant to Article 1, subsection (7) of the UNCITRAL Model Law to exclude the applicability of the Model Law. In this situation, subsection (d) of the Amendment provides that the default is that the mediation is covered by the Uniform Mediation Act.

(3) *If the participants prefer the narrower protections for the use of mediation communications provided by the UNCITRAL Model Law and do not want to be covered by the privilege provisions of the Uniform Mediation Act:* The participants should agree, in a record (written or other electronic form), that the privileges under Sections 4 through 6 [§§ 9-804 through 9-806] of the Uniform Mediation Act do not apply to the mediation or part agreed upon. It is important to note that this agreement does not preclude the raising of the privilege by a participant who does not know of the agreement before making the statement that is the subject of the privilege. Section 3(c) [§ 9-803(3)] provides:

If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Sections 4 through 6 [§§ 9-804 through 9-806] do not apply to the mediation or part agreed upon. However, Sections 4 through 6 [§§ 9-804 through 9-806] apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

If the participants so agree, the UNCITRAL Model Law provision on the use of mediation communications, Article 10, will be the default position.

(4) *If the parties would like to have an open mediation, with mediation communications being available for later proceedings:* The parties should enter the agreement described in point (3) and also agree that they exclude the applicability of Articles 9 and 10 of the UNCITRAL Model Law.

(5) *If the parties would like to have the mediation covered by another law:* They should designate in their agreement to mediate what law that will cover the international commercial mediation, in addition to taking the steps listed in point (4). They should realize, however, that a court may be unwilling to import a law of privilege because the court might deem privilege to be an aspect of procedure governed by the forum state's law. In addition, if the parties seek to import a mediation privilege law that is broader than that of the forum state, the court might view the agreement as an attempt to keep evidence from the tribunal and against public policy and therefore unenforceable.

2. Confidentiality

Article 9 of the UNCITRAL Model Law is consistent with Section 8 [§ 9-808] of the Uniform Mediation Act, which indicates that mediation communications are confidential to extent agreed upon by the parties or provided in state law, when Article 9 is read together with the notes on interpretation in the to Draft Guide to Enactment and Use of UNCITRAL Model Law on International Commercial Conciliation. The Draft Guide makes clear that the violation of Article 9 should not be a basis for sanctions unless the party disclosing understood that the mediation was governed by the confidentiality rule. The Draft Guide also makes clear that a participant may warn or disclose in the public interest despite the prohibitions. This is the current state of U.S. contract law regarding secrecy agreements as discussed in the Reporter's Notes to Section 8. The pertinent portion of the Draft Guide states:

> The Working Group agreed that an illustrative and non-exhaustive list of possible exceptions to the general rule on confidentiality would more appropriately be provided in the Guide to Enactment. Examples of such laws may include laws requiring the conciliator or parties to reveal information if there is a reasonable threat that a person will suffer death or substantial bodily harm if the information is not disclosed and laws requiring disclosure if it is in the public interest.

> For example to alert the public about a health or environmental or safety risk. It is the intent of the drafters that, in the event a court or other tribunal is considering an allegation that a person did not comply with article 9, it should include in its consideration any evidence of conduct of the parties that shows whether they had, or did not have, an understanding that a conciliation existed and consequently an expectation of confidentiality. When enacting the Model Law, certain States may wish to clarity article 9 to reflect that interpretation.

It is important that a reference to the Draft Guide be included in the Legislative Note, so that the courts will understand the intent of the UNCITRAL Model Law drafters.

3. Conflict of Laws

The drafters intend the privilege provisions to be widely applied by courts so that the mediation participants will know the breadth of the mediation communications privilege when they are engaged in the mediation, even though they may not anticipate all of the nations or states where the mediation communications might be sought or introduced. Nonetheless, the mediation participants should realize that choice of law rules in other nations and states vary and those rules may result in application of law other than that of the state where the mediation took place. *See, e.g.*, Asten, Inc. v. Wangner Systems Corp., No. C.A. 15617, 1999 Del. Ch. LEXIS 195 (Del. Ch. Sept 23, 1999) (applying South Carolina law to dispute arising out of Florida mediation of South Carolina court litigation between parties incorporated in Delaware because South Carolina had the most significant relationship to the transaction). In addition, courts in other nations and states may consider mediation privilege provisions to be procedural in nature, rather than substantive, and therefore apply the forum's privilege law rather than the law where the mediation occurred. Even within the United States, the courts have acted inconsistently with respect to mediation privileges that apply where the mediation was held. *See, e.g., United States v. Gullo*, 672 F. Supp. 99 (W.D.N.Y. 1987) (applying a state privilege in a federal grand jury proceeding concerning communications made during mediation in state program); *In re March, 1995 — Special Grand Jury*, 897 F. Supp. 1170 (S.D. Ind. 1995) (refusing to apply state court mediation privilege in a federal grand jury proceeding concerning communications made during

mediation in state court mediation program); *In re Grand Jury Subpoena Dated Dec. 17, 1996*, 148 F.3d 487 (5th Cir. 1998) (refusing to apply state privilege in a federal grand jury proceeding concerning mediation conducted in federally-funded mediation program operated by state).

The choice of law rules in many jurisdictions in the United States recognize party autonomy to select the law that will govern their transactions. For this reason, the drafters believe that courts in the United States will be most likely to apply this law to international commercial mediations occurring in other nations or states that later become the subject of a suit in the United States if the parties to the mediation have specified that it will be governed by the Uniform Mediation Act.

4. Uniformity

This Amendment is recommended. Nonetheless, a State may decide to adopt the Uniform Mediation Act without this amendment without losing the designation that it represents a Uniform State Law.

5. Reports to the Court

Whenever mediation occurs as part of a legal proceeding, the parties would be especially aggrieved if, in absence of full settlement, the mediator could make reports to the judge who will rule on the dispute being mediated. Such reports are specifically prohibited by Section 7 [§ 9-807] of the Uniform Mediation Act.

The drafters believe that Articles 9 and 10 of the UNCITRAL Model Law achieve the same result as Section 7 [§ 9-807] of the Uniform Mediation Act. Article 10(1) prohibits disclosures by a mediator and Article 10(3) prohibits a court or arbitral tribunal from ordering disclosures. When Article 9, which broadly requires confidentiality for all mediation information, is read in conjunction with these prohibitions, it should be interpreted to include a narrower confidentiality requirement that prohibits mediator reports, including recommendations of a specific outcome, to a judge or arbitrator. This interpretation maintains the reasonable expectations of the parties regarding confidentiality and avoids a situation in which the mediator could pressure settlement by threatening to make an unwelcome report to the person who will rule in the event that the mediation does not result in settlement.

6. Derogation from the Uniform Mediation Act

The Amendment, subsection (c) [(3)], provides that "nothing in Article 10 of the Model Law *derogates* from Section 4, 5 or 6 [§§ 9-804, 9-805 and 9-806]." Black's Law Dictionary indicates that one law derogates another law if it "limits the scope or impairs its utility and force." The drafters intend that the Uniform Mediation Act purposes should be achieved. For example, under the Uniform Mediation Act, a mediation communication includes any mediator statement whereas the Model Law protects only mediator proposals. This provision directs to court to protect mediator statements that were not proposals so that the protections of the Uniform Mediation Act are given full force. As a further example, the Uniform Mediation Act applies to discovery process, while the Model Law does not mention discovery. Under this provision, the court should accord a privilege during the discovery phase in order to avoid limiting the force of the Uniform Mediation Act.

The provision that the Model Law does not derogate also would apply to exceptions to the Uniform Mediation Act that are not recognized in the Model Act. For example, the Uniform Mediation Act excepts from the privilege a mediation communication that is a threat to commit a crime of violence, but the Model Law does not. The derogation provision makes clear that the court should give effect to the exception for the threat, because to do otherwise would frustrate the purposes of the Uniform Mediation Act.

7. Interpretation of the Model Law

The Model Law was drafted jointly by an international group. Therefore, the courts should use the interpretation guide referenced in the Legislative Note rather than drafting conventions of U.S. law as they interpret the Model Law.

8. Incorporation by Reference

It is important to note that the Amendment incorporates by reference a specific version of the Model Law, that adopted on June 22, 2002 (included in Appendix A). An amendment of the Model Law will not change this Section.

Some state legislatures may hesitate to incorporate by reference and may prefer to enact the Model Law. In that situation, the State can achieve uniformity by enacting this Amendment as well as the Model Law, changing the internal references accordingly.

APPENDIX A

(Model Law as adopted by the United Nations Commission on International Trade Law — UNCITRAL at its 35th session in New York on 28 June 2002 and approved by the United Nations General Assembly on November 19, 2002)

UNCITRAL Model Law on International Commercial Conciliation

Article 1. Scope of application and definitions

(1) This Law applies to international[1] commercial[2] conciliation.

[1]States wishing to enact this Model Law to apply to domestic as well as international conciliation may wish to consider the following changes to the text.

— Delete the word "international" in paragraph (1) of article 1; and

— Delete paragraphs (4), (5) and (6) of article 1.

[2]The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

(2) For the purposes of this Law, "conciliator" means a sole conciliator or two or more conciliators, as the case may be.

(3) For the purposes of this Law, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute.

(4) A conciliation is international if:

(a) The parties to an agreement to conciliate have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from either:

(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

(ii) The State with which the subject matter of the dispute is most closely connected.

(5) For the purposes of this article:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to conciliate;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

(6) This Law also applies to a commercial conciliation when the parties agree that the conciliation is international or agrees to the applicability of this Law.

(7) The parties are free to agree to exclude the applicability of this Law.

(8) Subject to the provisions of paragraph (9) of this article, this Law applies irrespective of the basis upon which the conciliation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

(9) This Law does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

(b) [...].

Article 2. Interpretation

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Variation by agreement

Except for the provisions of article 2 and article 6, paragraph (3), the parties may agree to exclude or vary any of the provisions of this Law.

Article 4. Commencement of conciliation proceedings [3]

[3]The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

(1) When the conciliation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the conciliation is suspended.

(2) Where the conciliation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the conciliation ended without a settlement agreement.

(1) Conciliation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in conciliation proceedings.

(2) If a party that invited another party to conciliate does not receive an acceptance of the invitation within thirty days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to conciliate.

Article 5. Number and appointment of conciliators

(1) There shall be one conciliator, unless the parties agree that there shall be two or more conciliators.

(2) The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.

(3) Parties may seek the assistance of an institution or person in connection with the appointment of conciliators. In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as conciliator; or

(b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

(4) In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, where appropriate, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

(5) When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 6. Conduct of conciliation

(1) The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.

(2) Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

(3) In any case, in conducting the proceedings, the conciliator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.

Article 7. Communication between conciliator and parties

The conciliator may meet or communicate with the parties together or with each of them separately.

Article 8. Disclosure of information

When the conciliator receives information concerning the dispute from a party, the conciliator may disclose the substance of that information to any other party to the conciliation. However, when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the conciliation.

Article 9. Confidentiality

Unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 10. Admissibility of evidence in other proceedings

(1) A party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;

(b) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the conciliation proceedings;

(d) Proposals made by the conciliator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator;

(f) A document prepared solely for purposes of the conciliation proceedings.

(2) Paragraph (1) of this article applies irrespective of the form of the information or evidence referred to therein.

(3) The disclosure of the information referred to in paragraph (1) of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph (1) of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

(4) The provisions of paragraphs (1), (2) and (3) of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.

(5) Subject to the limitations of paragraph (1) of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a conciliation.

Article 11. Termination of conciliation proceedings

The conciliation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;

(c) By a declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Article 12. Conciliator acting as arbitrator

Unless otherwise agreed by the parties, the conciliator shall not act as an arbitrator in respect of a dispute that was or is the subject of the conciliation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 13. Resort to arbitral or judicial proceedings

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

Article 14. Enforceability of settlement agreement [4]

[4]When implementing the procedure for enforcement of settlement agreements, an enacting State may consider the possibility of such a procedure being mandatory.

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable . . . *[the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement]*.

§ 9-812. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but this chapter does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

History.

I.C., § 9-812, as added by 2008, ch. 35, § 1, p. 71.

STATUTORY NOTES

Federal References.

Section 101(c) of the federal electronic signatures in global and national commerce act, referred to in this section, is codified as 15 U.S.C.S. § 7001(c).

Section 103(b) of the federal electronic signatures in global and national commerce act, referred to in this section, is codified as 15 U.S.C.S. § 7003(b).

Official Comment

This Section adopts standard language approved by the Uniform Law Conference that is intended to conform Uniform Acts with the Uniform Electronic Transactions Act (UETA) and its federal counterpart, Electronic Signatures in Global and National Commerce Act (E-Sign) (15 U.S.C 7001, et seq. (2000).

Both UETA and E-Sign were written in response to broad recognition of the commercial and other use of electronic technologies for communications and contracting, and the consensus that the choice of medium should not control the enforceability of transactions. These Sections are consistent with both UETA and E-Sign. UETA has been adopted by the Conference and received the approval of the American Bar

Association House of Delegates. As of December 2001, it had been enacted in more than 35 states.

The effect of this provision is to reaffirm state authority over matters of contract by making clear that UETA is the controlling law if there is a conflict between this Act and the federal E-sign law, except for E-sign's consumer consent provisions (Section 101(c) and its notice provisions (Section 103(b) (which have no substantive impact on this Act). Among other things, such clarification assures that agreements related to mediation — such as the agreement to mediate and the subsequently mediated settlement agreement — may not be challenged on the basis of a conflict between this Act and the federal E-sign law. Such challenges should be dismissed summarily by the courts.

§ 9-813. Uniformity of application and construction. — In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

I.C., § 9-813, as added by 2008, ch. 35, § 1, p. 71.

Official Comment

One of the goals of the Uniform Mediation Act is to simplify the law regarding mediation. Another is to make the law uniform among the States. In most instances, the Act will render unnecessary the other hundreds of different privilege statutes among the States, and these can be repealed. In fact, to do otherwise would interfere with the uniformity of the law.

However, the Drafters contemplate the Act as a floor in many aspects, rather than a ceiling, one that provides a uniform starting point for mediation but which respects the diversity in contexts, cultures, and community traditions by permitting states to retain specific features that have been tried and that work well in that state, but which need not necessarily be uniform. For example, as noted after Section 4, [§ 9-804] those States that provide specially that mediators cannot testify and impose damages from wrongful subpoena may elect to retain such provisions. Similarly, as discussed in the comments to Section 8 [§ 9-808], States with court rules that have confidentiality provisions barring the disclosure of mediation communications outside the context of proceedings may wish to retain those provisions because they are not inconsistent with the Act.

As discussed in the preface, point 5, the constructive role of certain laws regarding mediation can be performed effectively only if the provisions are uniform across the States. *See generally* James J. Brudney, *Mediation and Some Lessons from the Uniform State Law Experience*, 13 Ohio St. J. on Disp. Resol. 795 (1998). In this regard, the law may serve to provide not only uniformity of treatment of mediation in certain legal contexts, but can serve to help define what reasonable expectations may be with regard to

mediation. The certainty that flows from uniformity of interpretation can serve to promote local, state, and national interests in the expansive use of mediation as an important means of dispute resolution.

While the Drafters recognize that some such variations of the mediation law are inevitable given the diverse nature of mediation, the specific benefits of uniformity should also be emphasized. As discussed in the Prefatory Notes, uniform adoption of the UMA will make the law of mediation more accessible and certain in these key areas. Practitioners and participants will know where to find the law, and they and courts can reasonably anticipate how the statute will be interpreted. Moreover, uniformity of the law will provide greater protection of mediation than any one state has the capacity to provide. No matter how much protection one state affords confidentiality protection, for example, the communication will not be protected against compelled disclosure in another state if that state does not have the same level of protection. Finally, uniformity has the capacity to simplify and clarify the law, and this is particularly true with respect to mediation confidentiality. Where many states have several different confidentiality provisions, most of them could be replaced with an integrated Uniform Mediation Act. Similarly, to the extent that there may be confusion between states over which state's law would apply to a mediation with an interstate character, uniformity simplifies the task of those involved in the mediation by requiring them to look at only one law rather than the laws of all affected states.

§ 9-814. Application to existing agreements or referrals. — This chapter governs a mediation occurring after the effective date of this chapter pursuant to a referral or an agreement to mediate, whenever made.

History.

I.C., § 9-814, as added by 2008, ch. 35, § 1, p. 71.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this chapter" refers to the effective date of chapter 8, title 9, Idaho Code, enacted by S.L. 2008, ch. 35, effective July 1, 2008.

Section 2 of S.L. 2008, ch. 35 provides: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Official Comment

Section 17 [this section] is designed to avert unfair surprise, by setting dates that will make it likely that the mediation participants took the Act into account in setting up the mediation. Subsection (a) [combined with (a) in Idaho] precludes application of the Act to mediations pursuant to pre-effective date referral or agreement on the assumption that most of those making these referrals or agreements did not take into account the changes in law. If parties to these mediations seek to be covered by the Act, they can sign a new agreement to mediate on or after the effective date of the Act.

Subsection (b) [combined with (a) from model act in one sentence in Idaho] is based on the assumption that persons involved in mediation are likely to know about the Act and would therefore be more surprised by the non-application of the Act than the application of the Act after that point.

Each legislature can specify a year or another likely period for dissemination of the news among those involved in mediation.

Chapter 9
DEPOSITIONS

Sec.

9-901 — 9-929. [Repealed.]

§ 9-901. Depositions within or without state. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1893, p. 132, § 1; reen. 1899, p. 215, § 1; reen. R.C. & C.L., § 6059; C.S., § 8001; am. 1929, ch. 175, § 1, p. 309; I.C.A., § 16-901; am. 1969, ch. 126, § 4, p. 388, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 28(a), 28(d).

§ 9-902 — 9-904. Depositions — Notice — Service. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 2-4; reen. 1899, p. 215, §§ 2-4; reen. R.C. & C.L., §§ 6060-6060b; am. 1919, ch. 191, § 1, p. 574; C.S., §§ 8002-8004; I.C.A., §§ 16-902 — 16-904, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 5(b), 27(a)(2), 29, 30(a).

§ 9-905, 9-906. Depositions — Order — Taking without order. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 5, 6; reen. 1899, p. 215, §§ 5, 6; reen. R.C. & C.L., §§ 6061, 6062; C.S., §§ 8005, 8006; I.C.A., §§ 16-905, 16-906, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 30(a), 30(b)(2).

§ 9-907. When witnesses need not attend. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1893, p. 132, § 7; reen. 1899, p. 215, § 7; reen. R.C. & C.L., § 6063; C.S., § 8007; I.C.A., § 16-907, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 45(d)(2).

§ 9-908. When depositions shall not be read. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1893, p. 132, § 8; reen. 1899, p. 215, § 8; reen. R.C. & C.L., § 6064; C.S., § 8008; I.C.A., § 16-908, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 32(a)(3).

§ 9-909, 9-910. Powers of officer taking deposition — Application. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 9, 10; reen. 1899, p. 215, §§ 9, 10; reen. R.C. & C.L., §§ 6065, 6065a; C.S., §§ 8009, 8010; I.C.A., §§ 16-909, 16-910; am. 1969, ch. 126, § 5, p. 388, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 37(a), 37(b)(1), 37(b)(2), 37(d), 45(d)(1).

§ 9-911 — 9-914. Swearing and examination of witnesses — Writing, reading and signing deposition — Certificate of officer — Deposition to clerk. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 11-14; reen. 1899, p. 215, §§ 11-14; reen. R.C. & C.L., §§ 6065b-6066a; C.S., §§ 8011-8014; I.C.A., §§ 16-911 — 16-914, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 30(c), 30(e), 30(f)(1).

§ 9-915 — 9-919. Deposition offered in evidence — Commission to take — Authentication — Filing — Publication. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 15-19; reen. 1899, p. 215, §§ 15-19; reen. R.C. & C.L., §§ 6067-6068c; C.S., §§ 8015-8019; I.C.A., §§ 16-915 — 16-919, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 28(a), 28(b), 29, 30(f)(3), 30(f)(4), 32(a).

§ 9-920, 9-921. Objections to competency, questions, validity and admissibility. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 20, 21; reen. 1899, p. 215, §§ 20, 21; reen. R.C. & C.L., §§ 6069, 6069a; C.S., §§ 8020, 8021; I.C.A., §§ 16-920, 16-921, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 30(c), 32.

§ 9-922, 9-923. Use of depositions in subsequent actions — Irregularities not fatal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1893, p. 132, §§ 22, 29; reen. 1899, p. 215, §§ 22, 29; reen. R.C. & C.L., §§ 6069b, 6069c; C.S., §§ 8022, 8023; I.C.A., §§ 16-922, 16-923, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 32.

§ 9-924. Failure to take deposition — Judgment for expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1893, p. 132, § 30; reen. 1899, p. 215, § 30; reen. R.C. & C.L., § 6069d; C.S., § 8024; I.C.A., § 16-924, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 30(g)(1), 30(g)(2).

§ 9-925. Depositions upon written interrogatories. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1893, p. 132, § 31; reen. 1899, p. 215, § 31; reen. R.C. & C.L., § 6070; C.S., § 8025; I.C.A., § 16-925, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 29, 31.

§ 9-926 — 9-929. Depositions to be used out of state — Commission issued or not issued — Subpoena of witnesses — Certifying and transmitting depositions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 957, 972-974; R.S., R.C., & C.L., §§ 6071-6074; C.S., §§ 8026-8029; I.C.A., §§ 16-926 — 16-929; am. 1969, ch. 126, §§ 6, 7, p. 388, were repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 28(e), 29, 45(d)(1).

Idaho Code Ch. 10

Chapter 10
TAKING TESTIMONY OUT OF COURT

Sec.

9-1001. Taking testimony out of court. [Repealed.]

§ 9-1001. Taking testimony out of court. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1901, p. 132, § 1; reen. R.C. & C.L., § 6086; C.S., § 8042; I.C.A., § 16-1001, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 43(a), 53(b) to 53(d)(2), 53(e)(2).

Idaho Code Ch. 11

Chapter 11
PROCEEDINGS TO PERPETUATE TESTIMONY

Sec.

9-1101 — 9-1113. [Repealed.]

§ 9-1101 — 9-1113. Proceedings to perpetuate testimony. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This chapter, which comprised C.C.P. 1881, §§ 985-991; 1893, p. 132, §§ 23-28; reen. 1899, p. 215, §§ 23-28; reen. R.S., R.C., & C.L., §§ 6116-6126; C.S., §§ 8051-8063; I.C.A., §§ 16-1101 — 16-1113; am. 1969, ch. 126, §§ 8, 9, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 27(a)(1), 27(a)(3), 27(a)(4).

Idaho Code Ch. 12

Chapter 12
EXAMINATION OF WITNESSES

Sec.

9-1201 — 9-1212. [Repealed.]

§ 9-1201. Exclusion of adverse witnesses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 976; R.S., R.C., & C.L., § 6075; C.S., § 8030; I.C.A., § 16-1201, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 43(a), 43(b)(1), 43(b)(5).

§ 9-1202. Direct and cross-examination. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6076; C.S., § 8031; I.C.A., § 16-1202, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 43(b)(1).

§ 9-1203. Leading questions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6077; C.S., § 8032; I.C.A., § 16-1203, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 611.

§ 9-1204. Refreshment of memory. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6078; C.S., § 8033; I.C.A., § 16-1204, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 612.

§ 9-1205. Rules governing cross-examination. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1888-1889, p. 1, § 5; R.S., R.C., & C.L., § 6079; C.S., § 8034; I.C.A., § 16-1205, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho R. Civ. P. 43(b)(1) and Idaho Evid. R. 611.

§ 9-1206. Examination of adverse party. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1909, p. 334, §§ 1, 2; reen. C.L., § 6079a; C.S., § 8035; I.C.A., § 16-1206; am. 1963, ch. 104, § 2, p. 324, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 611.

§ 9-1207. Impeachment of own witness. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6080; C.S., § 8036; I.C.A., § 16-1207, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 607.

§ 9-1208. Reexamination and recalling witness. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6081; C.S., § 8037; I.C.A., § 16-1208, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 43(b)(5).

§ 9-1209. Impeachment by adverse party. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6082; C.S., § 8038; I.C.A., § 16-1209, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 607.

§ 9-1210. Impeachment by showing inconsistent statements. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6083; C.S., § 8039; I.C.A., § 16-1210, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 607.

§ 9-1211. Evidence of good character. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6084; C.S., § 8040; I.C.A., § 16-1211, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Evid. R. 608.

§ 9-1212. Inspection of writing. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6085; C.S., § 8041; I.C.A., § 16-1212, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho Civil Procedure Rule 43(b)(12).

Idaho Code Ch. 13

Chapter 13
RIGHTS AND DUTIES OF WITNESSES

Sec.

9-1301. Attendance of witnesses.

9-1302. Privilege of witnesses — Questions required to be answered.

9-1303. Privilege from arrest.

9-1304. Arrest in violation of preceding section — Contempt — Civil liability.

9-1305. Liability of officer making arrest.

9-1306. Discharge from arrest — Who may grant.

§ 9-1301. Attendance of witnesses. — A witness, served with a subpoena, must attend at the time appointed, with any papers under his control, required by the subpoena, and answer all pertinent and legal questions, and, unless sooner discharged, must remain until the testimony is closed.

History.

C.C.P. 1881, § 977; R.S., R.C., & C.L., § 6090; C.S., § 8043; I.C.A., § 16-1301.

STATUTORY NOTES

Cross References.

Inherent power of court to compel attendance of persons to testify, § 1-1603.

State need not prepay witness fees, § 9-1605.

When witness not obliged to attend, § 9-713.

CASE NOTES

Self-Incrimination.

Where two parties are separately charged with a felony and, upon the preliminary examination of one, the other is called as a witness on behalf of the state, he may refuse to answer any questions either on his examination in chief or on cross-examination that would tend in the least to incriminate him. State v. Bond, 12 Idaho 424, 86 P. 43 (1906).

Cited Caldero v. Tribune Publishing Co., 98 Idaho 288, 562 P.2d 791 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 3 et seq.

ALR. — Tort or statutory liability for failure or refusal of witness to give testimony. 61 A.L.R.3d 1297.

Idaho Code § 9-1302

§ 9-1302. Privilege of witnesses — Questions required to be answered. — A witness must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

History.

C.C.P. 1881, § 978; R.S., R.C., & C.L., § 6091; C.S., § 8044; I.C.A., § 16-1302.

STATUTORY NOTES

Cross References.

Bribery, incriminating testimony, immunity, § 18-1308.

CASE NOTES

Conviction of felony.

Self-incrimination.

Conviction of Felony.

The statute does not require disclosure of either the number or the nature of the felony or felonies of which an accused has been previously convicted, to be used for impeachment purposes when he has taken the stand in his own defense; therefore, where defendant, charged with committing a lewd and lascivious act with a minor child under the age of 16 was asked the question on cross-examination, "Have you ever been previously convicted of a felony?" and the defendant answered in affirmative, it deprived the defendant of a fair trial by allowing the prosecution to continue further interrogation concerning number or nature of such previous felonies. State v. Shepherd, 94 Idaho 227, 486 P.2d 82 (1971).

The fact that the legislature did not repeal this section after adoption of the Idaho Rules of Civil Procedure is indicative of an intent to retain the practice of impeachment by use of a prior felony conviction. State v. Knee, 101 Idaho 484, 616 P.2d 263 (1980).

The use of a prior felony conviction for impeachment purposes did not deprive defendant of his right to a fair and impartial jury trial where a jury instruction limited the prejudicial impact by stating that the conviction could be considered only on the issue of credibility and that the conviction did not necessarily impair defendant's credibility. State v. Knee, 101 Idaho 484, 616 P.2d 263 (1980).

Self-Incrimination.

Where accused refused to answer direct question as to former conviction of felony, but answered only of having liquor in his possession without specifying whether it was a second offense, he can not complain on appeal. State v. Alvord, 46 Idaho 765, 271 P. 322 (1928).

A defendant in a criminal action who takes the witness stand in his own behalf may be required on cross-examination to state whether or not he has ever been convicted of a felony, the objection that such answer may tend to incriminate him having no validity in such case. State v. Dunn, 91 Idaho 870, 434 P.2d 88 (1967).

Cited State v. Fong Loon, 29 Idaho 248, 158 P. 233 (1916); State v. Owen, 73 Idaho 394, 253 P.2d 203 (1953); Fowler v. Uezzell, 94 Idaho 951, 500 P.2d 852 (1972).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 106 et seq.

81 Am. Jur. 2d, Witnesses, § 78 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 522 et seq.

ALR. — Admissibility, as against interest, in civil case of declaration of commission of criminal act. 90 A.L.R.3d 1173.

Admissibility, as against interest, in criminal case of declaration of commission of criminal act. 92 A.L.R.3d 1164.

Records required to be kept by Emergency Price Control Act, privilege with respect to. 157 A.L.R.3d 1463.

§ 9-1303. Privilege from arrest. — Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other person in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

History.

C.C.P. 1881, § 979; R.S., R.C., & C.L., § 6092; C.S., § 8045; I.C.A., § 16-1303.

STATUTORY NOTES

Cross References.

Incriminating testimony may be required in prosecution for offenses relating to bribery, § 18-1308.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 77 et seq.

§ 9-1304. Arrest in violation of preceding section — Contempt — Civil liability. — The arrest of a witness contrary to the preceding section is void, and, when wilfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

History.

C.C.P. 1881, § 980; R.S., R.C., & C.L., § 6093; C.S., § 8046; I.C.A., § 16-1304.

STATUTORY NOTES

Cross References.

Unlawful detention of witness a contempt, § 7-601.

§ 9-1305. Liability of officer making arrest. — An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpoena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpoena was issued; and, 2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest.

3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officer and exonerates him from liability for discharging the witness when arrested.

History.

C.C.P. 1881, § 981; R.S., R.C., & C.L., § 6094; C.S., § 8047; I.C.A., § 16-1305.

§ 9-1306. Discharge from arrest — Who may grant. — The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of the provisions of this chapter. If the court has adjourned before the arrest, or before application for the discharge, a judge of the court may grant the discharge.

History.

C.C.P. 1881, § 982; R.S., R.C., & C.L., § 6095; C.S., § 8048; I.C.A., § 16-1306; am. 1969, ch. 126, § 10, p. 388.

STATUTORY NOTES

Effective Dates.

Section 11 of S.L. 1969, ch. 126 provided that the act should be effective at 12:01 a.m. on January 11, 1971.

Idaho Code Ch. 14

Chapter 14
ADMINISTRATION OF OATHS AND AFFIRMATIONS

Sec.

9-1401. Who may administer oaths.

9-1402. Form of oath.

9-1403. Peculiar forms of oaths.

9-1404. Peculiar forms of oath — Religions other than Christian.

9-1405. Affirmation in place of oath.

9-1406. Certification or declaration under penalty of perjury.

§ 9-1401. Who may administer oaths. — Every court, every judge or clerk of any court, every justice and every notary public, the secretary of state, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

History.

C.C.P. 1881, § 992; R.S., R.C., & C.L., § 6127; C.S., § 8064; I.C.A., § 16-1401.

CASE NOTES

Mayor of City.

A mayor of a city is without authority to administer oaths generally and has no authority to administer an oath to the appraisers in a condemnation proceeding. Thomas v. Boise City, 25 Idaho 522, 138 P. 1110 (1914).

Cited State v. Parker, 81 Idaho 51, 336 P.2d 318 (1959); First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc, 154 Idaho 626, 301 P.3d 632 (2012); State v. McClure, 159 Idaho 758, 367 P.3d 153 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 681 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 394.

ALR. — Disqualification of attorney, otherwise qualified, to take oath or acknowledgement from client. 21 A.L.R.3d 483.

Perjury conviction as affected by notary's nonobservance of formalities for administration of oath to affiant. 80 A.L.R.3d 278.

§ 9-1402. Form of oath. — An oath or affirmation in an action or proceeding, may be administered as follows, the person who swears or affirms, expressing his assent when addressed, in the following form:

You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in the issue (or matter), pending between .... and ...., shall be the truth, the whole truth, and nothing but the truth, so help you God.

History.

C.C.P. 1881, § 993; R.S., R.C., & C.L., § 6128; C.S., § 8065; I.C.A., § 16-1402.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 681 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 394.

§ 9-1403. Peculiar forms of oaths. — Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with, or in addition to, the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may, in its discretion, adopt that mode.

History.

C.C.P. 1881, § 994; R.S., R.C., & C.L., § 6129; C.S., § 8066; I.C.A., § 16-1403.

CASE NOTES

Form of Oath.

Testimony of deputy, that after he had signed the complaint the justice asked him "if that was the true facts as I knew it" and in answering that it was he felt in conscience he had taken on the obligation of the oath, was a sufficient compliance with the statute even though there was no formal administration of the oath, the deputy not having raised his hand or taken a verbal oath to the truth of the statements made in the complaint. State v. Parker, 81 Idaho 51, 336 P.2d 318 (1959).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 681 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 394.

§ 9-1404. Peculiar forms of oath — Religions other than Christian. — When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

History.

C.C.P. 1881, § 995; R.S., R.C., & C.L., § 6130; C.S., § 8067; I.C.A., § 16-1404.

CASE NOTES

Form of Oath.

Testimony of deputy, that after he had signed the complaint the justice asked him "if that was the true facts as I knew it" and in answering that it was he felt in conscience he had taken on the obligation of the oath, was a sufficient compliance with the statute even though there was no formal administration of the oath, the deputy not having raised his hand or taken a verbal oath to the truth of the statements made in the complaint. State v. Parker, 81 Idaho 51, 336 P.2d 318 (1959).

§ 9-1405. Affirmation in place of oath. — Any person who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed, in the following form: "You do solemnly affirm (or declare), that," etc., as above provided.

History.

C.C.P. 1881, § 996; R.S., R.C., & C.L., § 6131; C.S., § 8068; I.C.A., § 16-1405.

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 681 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 394.

§ 9-1406. Certification or declaration under penalty of perjury. — (1) Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to a law of this state, any matter is required or permitted to be supported, evidenced, established or proved by the sworn statement, declaration, verification, certificate, oath, affirmation or affidavit, in writing, of the person making the same, other than a deposition, an oath of office or an oath required to be taken before a specified official other than a notary public, such matter may with like force and effect be supported, evidenced, established or proven by the unsworn certification or declaration, in writing, which is subscribed by such person and is in substantially the following form:

"I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct."

....

(Date) (Signature) (2) This section shall not apply to acknowledgments.

History.

I.C., § 9-1406, as added by 2013, ch. 259, § 1, p. 636.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Idaho Code Ch. 15

Chapter 15
TENDER AND RECEIPT

Sec.

9-1501. Written offer equivalent to tender.

9-1502. Debtor may demand receipt.

Idaho Code § 9-1501

§ 9-1501. Written offer equivalent to tender. — An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

History.

C.C.P. 1881, § 983; R.S., R.C., & C.L., § 6110; C.S., § 8049; I.C.A., § 16-1501.

STATUTORY NOTES

Cross References.

Objections to mode of performance of contracts waived if not stated, § 29-112.

CASE NOTES

Costs.

Creditor entitled to a reasonable time to reject or accept.

Effect of not objecting.

Forfeitures.

Mechanics' liens.

Offer in writing.

Oral offers.

Present ability to pay.

Sufficiency of tender.

Tender by check.

Costs.

A plaintiff cannot recover costs but must pay costs to a defendant where a sufficient tender has been made prior to commencement of the action.

Boise Lumber Co. v. Independent School Dist., 36 Idaho 778, 214 P. 143 (1923).

Creditor Entitled to a Reasonable Time to Reject or Accept.

There is nothing in this section that deprives a creditor of a reasonable time within which to reject or accept the tender and for the purpose of ascertaining the amount due. Hyams v. Bamberger, 36 P. 202 (1894); Wooten v. Dahlquist, 42 Idaho 121, 244 P. 407 (1926).

Effect of Not Objecting.

Where no objections are made at the time of tender under this section and § 29-112, any objection that might have been urged thereto is waived. Harding v. Home Inv. & Sav. Co., 49 Idaho 64, 286 P. 920 (1930).

Forfeitures.

In suit by seller to quiet title to real estate sold on contract, which provided for notice by seller in event it elected to rescind contract for default in payment, cross-complaint by purchaser, which alleged willingness and ability to pay balance, barred forfeiture. Stockmen's Supply Co. v. Jenne, 72 Idaho 57, 237 P.2d 613 (1951).

Mechanics' Liens.

A tender of the amount due upon a claim for which a mechanic's lien may be filed, if made prior to the filing of the lien, extinguishes the same. Boise Lumber Co. v. Independent School Dist., 36 Idaho 778, 214 P. 143 (1923).

Offer in Writing.

Defendant's tender of performance by offering to convey two lots, submitted by way of a letter from defendant's counsel to plaintiff's counsel, comported with this section, where the letter represented an "offer in writing" to deliver deeds to the lots in question. Sewell v. Neilsen, Monroe, Inc., 109 Idaho 192, 706 P.2d 81 (Ct. App. 1985).

Oral Offers.

This statute applies to written tenders only and has no application to oral offers. Allis-Chalmers Mfg. Co. v. Harris, 56 Idaho 769, 59 P.2d 345 (1936).

Statutes, declaring written offer to pay money or deliver an instrument or personalty equivalent to production and tender thereof, if not accepted, and providing that the debtor is entitled to a receipt and may demand a proper signature thereto as a condition precedent to the payment or delivery, are inapplicable to an oral offer by an agent of a mortgage assignee to pay the assignee of a prior mortgage the sum paid by the latter therefor. Allis-Chalmers Mfg. Co. v. Harris, 56 Idaho 769, 59 P.2d 345 (1936).

Present Ability to Pay.

Like the common-law rule of tender, this section requires a present ability to pay the amount of the tender. Buckley v. Orem, 112 Idaho 117, 730 P.2d 1037 (Ct. App. 1986).

Sufficiency of Tender.

To stop the running of interest, it is not only necessary to tender whole amount due, but, if money so tendered is not accepted, it must be kept on deposit subject to demand of the person to whom tender is made, or, a sufficient offer in writing must be made to avoid necessity of keeping money on deposit. Machold v. Farnan, 20 Idaho 80, 117 P. 408 (1911).

Tender is an offer to pay money coupled with a present ability to do the act. It must be definite and certain in character so as to leave no reasonable doubt that the tenderer, at the time, intended to make full and unconditional payment. Wooten v. Dahlquist, 42 Idaho 121, 244 P. 407 (1926).

The "mode" (as used in § 29-112) of performance includes unwarranted conditions in the tender which the person tendering upon objection by the creditor might remove and if objections to such conditions are not raised by the creditor, they are deemed waived. Harding v. Home Inv. & Sav. Co., 49 Idaho 64, 286 P. 920 (1930).

A letter, stating that a sum, which was more than the court found to be payable, was deposited with a bank, with instructions to remit said sum upon tender of deed with revenue stamps attached, satisfied the provisions of this section. Dohrman v. Tomlinson, 88 Idaho 313, 399 P.2d 255 (1965).

Withdrawal of tender with the permission of the court did not render the tender void where defendants' answer and counterclaim contained an offer to perform the agreement in litigation, pursuant to which tender was made. Darrar v. Joseph, 91 Idaho 210, 419 P.2d 211 (1966).

Tender by Check.

A tender by check sufficiently complies with this section in the absence of any objection to such tender. Boise Lumber Co. v. Independent School Dist., 36 Idaho 778, 214 P. 143 (1923).

Offer of payment of $100,000 by insurance check in hand, which would extinguish defendant parents' liability, and partially satisfy defendant son's liability, was unconditional, and, by either the terms of the policy or this section, insurer was not liable for interest accruing on $100,000 of the judgment after the letter making the offer was mailed. Buckley v. Orem, 112 Idaho 117, 730 P.2d 1037 (Ct. App. 1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 74 Am. Jur. 2d, Tender, § 1 et seq.

C.J.S. — 86 C.J.S., Tender, § 1 et seq.

§ 9-1502. Debtor may demand receipt. — Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

History.

C.C.P. 1881, § 984; R.S., R.C., & C.L., § 6111; C.S., § 8050; I.C.A., § 16-1502.

CASE NOTES

Section inapplicable to creditor.

Voluntary payments not recoverable.

Section Inapplicable to Creditor.

This statute gives the "debtor" the right to demand a receipt but it has no application to a creditor. Allis-Chalmers Mfg. Co. v. Harris, 56 Idaho 769, 59 P.2d 345 (1936).

A mortgage assignee's offer to pay assignee of prior mortgage the amount paid by the latter therefor is held to be a legal tender, even if the offeror demanded an assignment instead of a release of prior mortgage, in the absence of objection to the mode, form, or substance of the offer. Allis-Chalmers Mfg. Co. v. Harris, 56 Idaho 769, 59 P.2d 345 (1936).

Voluntary Payments Not Recoverable.

Generally, except where otherwise provided by statute, one cannot, either by set-off or counterclaim, or by a direct action, recover back money which he had voluntarily paid with full knowledge of all of the facts and without any fraud, duress, or extortion, although no obligation to make such payment existed. Breckenridge v. Johnston, 62 Idaho 121, 108 P.2d 833 (1940).

Idaho Code Ch. 16

Chapter 16
FEES AND MILEAGE OF WITNESSES

Sec.

9-1601. Witnesses' fees in district court.

9-1602. Witnesses' fees in probate and justices' courts. [Repealed.]

9-1603. Interpreters' fees.

9-1604. Attorneys not entitled to witness' fees.

9-1605. State need not prepay fees.

§ 9-1601. Witnesses' fees in district court. — Witnesses in civil actions in district court or magistrates division thereof, or before any referee, master or commissioner thereof, are entitled to receive such witness fees and travel expenses as determined by the trial court pursuant to the Idaho Rules of Civil Procedure.

History.

R.S., R.C., & C.L., § 6139; C.S., § 8069; I.C.A., § 16-1601; am. 1957, ch. 140, § 1, p. 232; am. 1977, ch. 5, § 1, p. 10.

STATUTORY NOTES

Cross References.

Election contests legislative and state executive offices, witnesses' fees and mileage, § 34-2112.

Procedures regarding costs, Idaho Civil Procedure Rules 54(d)(1) to 54(d)(6).

Effective Dates.

Section 2 of S.L. 1977, ch. 5 declared an emergency. Approved February 15, 1977.

CASE NOTES

Amount of compensation.

Mileage.

Who entitled to fees.

Amount of Compensation.

Where trial lasts more than one day, and a witness is subpoenaed to be present at trial and makes arrangements to be called when needed and actually attends only on day he testifies, he is entitled to per diem compensation for one day only. Griffith v. Montandon, 4 Idaho 75, 35 P. 704 (1894).

Mileage.

Regardless of number of days in attendance at trial, witnesses are allowed mileage one way only once. Gasser v. Garden Water Co., 81 Idaho 421, 346 P.2d 592 (1959).

Who Entitled to Fees.

Witness is entitled to fees and same may be taxed as costs, although such witness is wife or mother of party calling her. Griffith v. Montandon, 4 Idaho 75, 35 P. 704 (1894); Anderson v. Ferguson-Bach Sheep Co., 12 Idaho 418, 86 P. 41 (1906).

This section does not require, as a condition precedent to recovery of mileage by a witness, that he should have been obliged to attend, or that he should have been subpoenaed, but the only test is, was he a witness; one who attends and testifies as a witness is entitled to mileage although he lives in another county from that of trial and more than thirty miles from seat of trial. Anderson v. Ferguson-Bach Sheep Co., 12 Idaho 418, 86 P. 41 (1906).

Witness is entitled to fees and mileage for distance actually traveled within the state in going to place of trial, although he resides out of the state and is not obliged to attend. State v. Baird, 13 Idaho 126, 89 P. 298 (1907).

Agents and employees for corporation, and even its president, which is successful party to suit are nonetheless entitled to witness fees and mileage for their attendance upon trial when called as witnesses. Feenaughty Mach. Co. v. Turner, 44 Idaho 363, 257 P. 38 (1927).

Witness fees of an attorney who appeared as a witness merely as a courtesy to a litigant's counsel may not be taxed as cost where there was no demand for such fee on the part of the attorney-witness. Feenaughty Mach. Co. v. Turner, 44 Idaho 363, 257 P. 38 (1927).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 66 et seq.

C.J.S. — 98 C.J.S., Witnesses, § 70 et seq.

ALR. — Allowance of mileage or witness fees with respect to witnesses who are not called to testify or not permitted to do so when called. 22

A.L.R.3d 675.

§ 9-1602. Witnesses' fees in probate and justices' courts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 6140; C.S., § 8070; I.C.A., § 16-1602; am. 1957, ch. 140, § 2, p. 232 courts was repealed by S.L. 1969, ch. 111, § 20.

§ 9-1603. Interpreters' fees. — The interpreters are entitled to receive such fee for their services as set and determined by the court together with the same rate per mile as the state of Idaho pays for state employees pursuant to section 67-2008, Idaho Code, to be paid out of the county treasury by order of the court in both civil and criminal actions.

History.

R.S., R.C., & C.L., § 6141; C.S., § 8071; I.C.A., § 16-1603; am. 1959, ch. 65, § 1, p. 137; am. 1975, ch. 64, § 3, p. 130; am. 1982, ch. 213, § 2, p. 587.

CASE NOTES

Improper Charging of Party.

Trial court's order, charging husband with the costs of translating documents in the Spanish language and submitted to the court by wife, was improper as this section provides that interpreter's fees are to be paid out of the county treasury. Jones v. Jones, 117 Idaho 621, 790 P.2d 914 (1990).

§ 9-1604. Attorneys not entitled to witness' fees. — No counselor or attorney at law in any case shall be allowed any fees for attendance as a witness in any such cause.

History.

R.S., R.C., & C.L., § 6142; C.S., § 8072; I.C.A., § 16-1604.

§ 9-1605. State need not prepay fees. — The attorney-general or any prosecuting attorney is authorized to cause subpoenas to be issued, and to compel the attendance of witnesses on behalf of the state, without paying or tendering fees in advance to any witnesses; and any witness failing or neglecting to attend after being served with a subpoena, may be proceeded against and shall be liable in the same manner as provided by law in other cases when fees have been tendered or paid.

History.

R.S., R.C., & C.L., § 6143; C.S., § 8073; I.C.A., § 16-1605.

STATUTORY NOTES

Cross References.

Subpoena on behalf of state, prepayment of fees not required, § 31-3211.

Witnesses before county commissioners, prepayment or tender of fees not required, § 31-846.

Idaho Code Ch. 17

Chapter 17
PROOF OF FACTS CONTAINED IN PUBLIC RECORDS

Sec.

9-1701. Licensure or nonlicensure.

9-1702. Proof of prescription drug status.

§ 9-1701. Licensure or nonlicensure. — (1) The existence or nonexistence of licensure by any public authority in this state, the United States, or any state of the United States may be proved, prima facie, in any criminal or civil action, by the affidavit of the custodian of the records of the licensing authority, or one acting with the authorization of the custodian, stating that the conclusion given was based on a diligent search of the records, and accompanied by a certificate that such person has the custody.

(2) In cases where public licensing functions performed by more than one licensing authority in this state relate to the same subject matter, the bureau of occupational licenses may, by regulation, designate a single custodian to maintain a master list of licensees, and the affidavit of such person, or one acting with his authority, may be used as evidence in the manner and with the effect set forth in subsection (1) of this section.

(3) This section does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute, rule of criminal or civil procedure or rule of evidence recognized by the courts of this state.

History.

I.C., § 9-1701, as added by 1979, ch. 131, § 4, p. 402.

STATUTORY NOTES

Prior Laws.

Former §§ 9-1701 and 9-1702 (S.L. 1978, ch. 275 [No. 1], § 3, p. 640) are deemed superseded by S.L. 1979, ch. 131, § 4.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: "Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses. See § 67-2602.

§ 9-1702. Proof of prescription drug status. — Proof that a drug is a prescription or legend drug may be made as provided by section 54-1738, Idaho Code.

History.

I.C., § 9-1702, as added by 1979, ch. 131, § 4, p. 402.

STATUTORY NOTES

Prior Laws.

Former § 9-1702 is deemed superseded. See Prior Laws, § 9-1701.

Effective Dates.

Section 5 of S.L. 1979, ch. 131 declared an emergency. Approved March 27, 1979.

Chapter 18
UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT

Sec.

9-1801. Short title.

9-1802. Definitions.

9-1803. Applicability.

9-1804. Hearing whether to allow testimony by alternative method.

9-1805. Standards for determining whether child witness' testimony may be presented by alternative method.

9-1806. Factors for determining whether to permit alternative method.

9-1807. Order regarding testimony by alternative method.

9-1808. Right of parties to examine child witness.

§ 9-1801. Short title. — This chapter may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act."

History.

I.C., § 9-1801, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

§ 9-1802. Definitions. — In this chapter:

(1) "Alternative method" means a method by which a child witness testifies which does not include all of the following:

(a) Having the child present in person in an open forum;

(b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and

(c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

(2) "Child witness" means an individual under the age of thirteen (13) years who has been or will be called to testify in a proceeding.

(3) "Criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state and a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of the criminal law of this state.

(4) "Noncriminal proceeding" means a trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

History.

I.C., § 9-1802, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

COMMENT TO OFFICIAL TEXT

In litigation to which the Act should apply, Sections 2(3) and (4) define criminal and noncriminal proceedings broadly. In these sections, the word "court" embraces both jury and non-jury actions. Section 2(3) defining criminal proceeding also includes a juvenile delinquency proceeding or comparable proceeding involving conduct that if engaged in by an adult would constitute a violation of the criminal law of the state. An alternative method by which a child testifies in a juvenile proceeding involving such conduct is no less important than in an adult criminal proceeding. See *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967); *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

In noncriminal proceedings, the Act may be invoked in civil cases generally, in juvenile and family law proceedings, subject to the provisions of Section 3, and in administrative proceedings. In the context of physical or sexual abuse, the impact upon and risks to a child testifying in the courtroom in civil cases for damages, in juvenile proceedings and in family law proceedings are potentially as real as in criminal prosecutions. Similarly, the testimony of a child by an alternative method may also, for instance, be appropriate in an administrative proceeding to revoke the license of a day care center.

"Child witness" is defined in Section 2(2) as an individual under the age of a bracketed [13] who is competent to testify and is called to testify in the proceeding. The Act thereby accommodates the diverse approaches to age currently recognized among the several states for taking the testimony of a child by an alternative method. For example, while in Georgia the taking of testimony by closed-circuit television applies to a child ten years of age or younger (Ga. Code Ann. § 17-8-55) and in Florida the age is under sixteen years (Fla. Stat. Ann. § 92.54). The approach in the Act is based upon a recommendation that the maximum age should be thirteen.

The term "child witness" in Section 2(2) includes both a child who is a party to a proceeding and one who is merely called to testify as a witness.

Finally, as to the taking of the testimony of a child by an alternative method, the term is defined broadly in Section 2(1) to mean not only alternative methods currently recognized among the several states for taking the testimony of a child, such as audio visual recordings to be later presented in the courtroom, closed-circuit television which is transmitted

directly to the courtroom, and room arrangements that avoid direct confrontation between a witness and a particular party or the finder of fact, but also other similar methods either currently employed or through technology yet to be developed or recognized in the future.

§ 9-1803. Applicability. — This chapter applies to the testimony of child witnesses in all criminal or noncriminal proceedings. However, this chapter does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify, or in a juvenile courtroom proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of this state, testimony by a child witness in a closed forum as may be authorized or required by law.

History.

I.C., § 9-1803, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

COMMENT TO OFFICIAL TEXT

Section 3 provides that in noncriminal proceedings the Act does not preclude the use of other recognized state procedures for taking the testimony of a child by an alternative method. For example, in Delaware in custody and visitation cases the court is authorized to "interview the child in chambers to ascertain the child's wishes as to his or her custodian." Del. Code Ann. Tit. 13, § 724. There are twenty states that have statutes similar to the Delaware statute. In addition, there are also a number of states in which a similar procedure is authorized by court rule or decisional law. See, for example, the Davidson County Juvenile Court Rules in Tennessee and the North Dakota case of *Ryan v. Flemming*, 533 N.W.2d 920 (N.D. 1995), authorizing a trial judge to interview a child in chambers. Section 3 also accommodates the law of eight states (and perhaps other states when children under 12 years of age are involved) authorizing or requiring a

closed forum in juvenile proceedings in which criminal law violations are at issue. Thus, the Act preserves the right to utilize existing closed court procedures in an adopting state but, at the same time, also preserves the use of the other alternative method procedures provided for by the Act. The Act does not apply to or govern the taking or use of evidence obtained through discovery depositions or other discovery methods or devices authorized and regulated by the Rules of Civil or Criminal Procedure of the enacting jurisdiction.

As a legislative note, it should be observed that the bracketed material in Section 3 should be omitted in enacting states that require or substantially require an open forum in juvenile proceedings in which criminal law violations are at issue.

§ 9-1804. Hearing whether to allow testimony by alternative method. — (1) The presiding officer of a criminal or noncriminal proceeding may order a hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

(2) A hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence, except for the rules of privilege.

History.

I.C., § 9-1804, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

COMMENT TO OFFICIAL TEXT

Sections 4(a) and (b) set forth the procedures for instituting and conducting the hearing to determine whether an alternative method for taking the testimony of the child should be authorized. The hearing authorized in Section 4 is in the nature of a preliminary hearing or a hearing on a motion in limine to determine only whether the testimony of the child

should be taken by an alternative method. The Uniform Rules of Evidence (1999), Rule 104(d) and the Federal Rules of Evidence, Rule 104(c) provide for conducting a hearing on a preliminary matter out of the presence of the jury if the interests of justice require. The Section 4 hearing is a separate and distinct hearing from the proceeding defined in Sections 2(3) and (4) in which, upon order of the presiding officer, the testimony is actually presented by an alternative method. See also Sections 7 and 8, *infra*. The hearing under Section 4 may, in the discretion of the presiding officer, be conducted in an *in camera* proceeding.

The term "presiding officer" is used in this Act to broadly describe the person under whose supervision and jurisdiction the proceeding is being conducted. It includes a judge in whose court the case is being heard, a quasi-judicial officer, or an administrative law judge or hearing officer, depending upon the nature of the case and the type of proceeding in which the testimony of a child is sought or presented by an alternative method.

The hearing under Section 4 is initiated upon the motion of a party, the child witness, an interested individual with sufficient connection to the child to be a proper person to seek to protect the child's best interests, or the presiding officer *sua sponte*, all as set forth in Section 4(a).

It is also required under Section 4(b) that reasonable notice be given to all parties, a nonparty movant, or other appropriate person. The child's presence at the hearing is not required unless ordered by the presiding officer. The presiding officer should consider the factors enumerated in Section 6 of the Act, *infra*, in determining whether the child should be present at the hearing.

In conducting the hearing under Section 4, the presiding officer is not bound by the rules of evidence except for the rules of privilege, for example, as set forth in Rule 104(a) of the Uniform Rules of Evidence (1999) or Rule 104(a) of the Federal Rules of Evidence. At the same time, if, as provided in Rule 104(b) of the Uniform Rules, "there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the court [or presiding officer], in making its determination, may review the material outside the presence of any other person."

Finally, Section 4(b) also provides that the hearing to determine whether an alternative method for the presenting of the testimony of the child is to be permitted shall be conducted on the record. It is also expected that a transcript of the record of the hearing will be made available to the public and news media to the same extent as in similar motions in any other judicial or quasi-judicial proceeding, subject, of course, to the presiding officer's authority, as in any other case, to balance constitutional and privacy interests and seal from public view sensitive information that should be protected. See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986).

§ 9-1805. Standards for determining whether child witness' testimony may be presented by alternative method. — (1) In a criminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method only in the following situations:

(a) A child witness' testimony may be taken otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum.

(b) A child witness' testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

(2) In a noncriminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method if the presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider: (a) The nature of the proceeding; (b) The age and maturity of the child; (c) The relationship of the child to the parties in the proceeding; (d) The nature and degree of emotional trauma that the child may suffer in testifying; and (e) Any other relevant factor.

History.

I.C., § 9-1805, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

COMMENT TO OFFICIAL TEXT

Section 5 sets forth the standards that must be applied by the presiding officer in determining whether to allow the child to testify by an alternative method. Sections 5(a)(1) and (2) prescribe the standards that must be applied in criminal proceedings. In the case of face-to-face confrontation, Section 5(a)(2) comports with the essence of the holding of the Supreme Court of the United States in *Maryland v. Craig*, 497 U.S. 836, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990), that the presenting of the testimony by an alternative method is necessary to protect the welfare of the child witness and that the child would suffer serious emotional stress and be traumatized to the extent the child could not reasonably be expected to communicate in the courtroom or the personal presence of a party. The Act does not attempt to define the method or methods by which face-to-face confrontation may be avoided. Closed-circuit television projected directly into the courtroom, video-taped testimony presented in the courtroom or room arrangements or equipment that shield the witness from the defendant [or the finder of fact in the case of Section 5(a)(1)] have been used with varying degrees of approval by the courts. See *Maryland v. Craig*, 497 U.S. 836, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990); *Coy v. Iowa*, 487 U.S. 1012, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988). The word "defendant" in Section 5(a)(2) is intended to include and incorporate the word respondent or other similar term, if any, that may be used to denote the accused in a juvenile delinquency proceeding included in Section 2(3).

Sections 5(a)(1) and (2) establish the standard of "clear and convincing evidence" (highly probably true) as the standard that must be met in determining whether to permit the presentation of testimony of a child by an alternative method. The standard of persuasion in criminal cases currently varies throughout the several states. However, there are at least four states that apply the clear and convincing evidence standard of persuasion in determining whether to permit the presentation of a child's

testimony by an alternative method. These are: Alaska (*Reutter v. State*, 886 P.2d 1298 (Alaska Ct. App. 1994)); Arkansas (Ark. Code Ann. § 16-43-1001); California (Cal. Penal Code § 1347); Connecticut (Conn. Gen. Stat. § 54-86g); and New York (N.Y. Crim. Proc. Law § 65.10). Of these, the Alaska decision in *Reutter* seems most persuasive because of the court's reliance on *Maryland v. Craig*, *supra*. In *Craig*, the Supreme Court did not address the issue other than to require specific evidence and an express finding that the probable effect of the defendant's presence on the child witness would significantly impair the ability of the child to testify accurately. See *Maryland v. Craig*, 497 U.S. at 855-56, 110 S. Ct. at 3169. In *Reutter*, the court held that the preponderance of evidence standard was insufficient to meet the requirements of *Craig* . See *Reutter v. State*, 886 P.2d at 1308. Therefore, given the criminal nature of the proceedings under Sections 5(a)(1) and (2) and the persuasiveness of *Reutter*, it seems appropriate that any state adopting the Act should conform to the clear and convincing evidence standard of persuasion even though there are at least two jurisdictions which follow the preponderance of evidence standard of persuasion. See *Thomas v. People*, 803 P.2d 144 (Colo. 1990); *United States v. Carrier*, 9 F.3d 867 (10th Cir. 1993).

Section 5(b) sets forth the standards that must be applied in noncriminal proceedings to determine whether to permit an alternative method for presenting the testimony of a child. In these proceedings the Act sets forth the alternative standards of "best interests of the child" or to "enable the child to communicate with the finder of fact." However, unlike criminal proceedings, the standard of persuasion is only that the presiding officer must find by a preponderance of the evidence (more probably true than not)"that allowing the child to testify by an alternative method is necessary to protect the best interests of the child or enable the child to communicate with the finder of fact." Given the civil nature of these proceedings and the fact that the preponderance of evidence standard generally applies to civil proceedings, this lesser standard of persuasion is appropriate for noncriminal proceedings. Sections 5(b)(1) through (5) set forth a non-exclusive list of factors that the presiding officer may consider in making this determination.

§ 9-1806. Factors for determining whether to permit alternative method. — If the presiding officer determines that a standard under section 9-1805, Idaho Code, has been met, the presiding officer shall determine whether to allow the presentation of the testimony of a child witness by an alternative method and in doing so shall consider:

(1) Alternative methods reasonably available; (2) Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method; (3) The nature of the case; (4) The relative rights of the parties; (5) The importance of the proposed testimony of the child; (6) The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and (7) Any other relevant factor.

History.

I.C., § 9-1806, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CASE NOTES

Closed-circuit Television.

In allowing a child victim to testify by closed-circuit television, the record showed the district court considered the relative rights and interests of the parties under this section. State v. Baeza, 161 Idaho 38, 383 P.3d 1208 (2016).

COMMENT TO OFFICIAL TEXT

If the presiding officer determines under Section 5 that the standards for permitting the use of an alternative method for the presentation of the testimony of a child witness have been met, then the presiding officer shall consider the factors set forth in Section 6 in deciding whether to allow the presentation of a child witness' testimony by an alternative method.

§ 9-1807. Order regarding testimony by alternative method. — (1) An order allowing or disallowing the presentation of the testimony of a child witness by an alternative method must state the findings of fact and conclusions of law that support the presiding officer's determination.

(2) An order allowing the presentation of the testimony of a child witness by an alternative method must state:

(a) The method by which the testimony is to be presented;

(b) A list, individually or by category, of the persons either allowed to be present or required to be excluded during the taking of the testimony of the child;

(c) Any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

(d) Any condition or limitation upon the participation of persons present during the taking of the testimony of the child; and

(e) Any other condition necessary for taking or presenting the testimony.

(3) The alternative method ordered by the presiding officer must be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

History.

I.C., § 9-1807, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

COMMENT TO OFFICIAL TEXT

Section 7 provides expressly for the issuance of an order either allowing or disallowing the presentation of the testimony of a child witness by an alternative method. First, Section 7(a) requires a statement of the findings of fact and conclusions of law that support the presiding officer's determination. Second, Section 7(b) specifies the conditions under which the testimony is to be presented if an alternative method is to be ordered. Third, Section 7(c) requires that the alternative method be no more restrictive of the rights of the parties than is necessary to serve the purposes of presenting the testimony by an alternative method. In this connection, it should also be observed that the Act does not expressly provide for a priority in the alternative methods that may be ordered by the presiding officer. Nevertheless, in complying with Section 7(c), the importance of the examination or cross-examination of the child witness as provided in Section 8 strongly suggests that the alternative method authorized would normally include only video-taped testimony, closed-circuit television, or shielding the child witness in the courtroom from a face-to-face confrontation with the defendant or other party against whom the testimony is being offered.

§ 9-1808. Right of parties to examine child witness. — An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination and cross-examination of the child witness.

History.

I.C., § 9-1808, as added by 2003, ch. 152, § 2, p. 437.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 2003, ch. 152 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

COMMENT TO OFFICIAL TEXT

Section 8 ensures that the requirements of the Sixth Amendment right of confrontation will be met in criminal proceedings and, when applicable, preserves the right of examination and cross-examination of the child witness in noncriminal proceedings. However, Section 8 does not impact upon other state noncriminal proceedings where limitations are placed upon the right to examine or cross-examine the child witness through the interviewing of a child in chambers, or some other recognized *in camera* examination of the child witness. See Comment to Section 3, *supra*. When the testimony of a child witness is presented by an alternative method as permitted under this Act, such testimony becomes part of the trial or hearing record like any other evidence presented to the finder of fact.

Licensed to the People of Idaho, Public Resource

Title 10
ISSUES, TRIAL AND JUDGMENT IN CIVIL ACTIONS

Chapter

Chapter 1. Issues — Modes of Trial — Postponement, §§ 10-101 — 10-111.
Chapter 2. Trial by Jury. [Repealed.]
Chapter 3. Trials to the Court. [Repealed.]
Chapter 4. References and Trials by Referees. [Repealed.]
Chapter 5. Exceptions. [Repealed.]
Chapter 6. New Trials. [Repealed.]
Chapter 7. Judgment in General. [Repealed.]
Chapter 8. Judgment Upon Failure to Answer. [Repealed.]
Chapter 9. Confession of Judgment Without Action. [Repealed.]
Chapter 10. Submitting Controversy Without Action. [Repealed.]
Chapter 11. Manner of Giving and Entering Judgment — Lien and Satisfaction, §§ 10-1101 — 10-1115.
Chapter 12. Declaratory Judgments, §§ 10-1201 — 10-1217.
Chapter 13. Foreign Judgments, §§ 10-1301 — 10-1309.
Chapter 14. Uniform Foreign Country Money Judgments Recognition Act, §§ 10-1401 — 10-1411.
Chapter 15. Uniform Foreign-Money Claims Act, §§ 10-1501 — 10-1517.

Idaho Code Ch. 1

Chapter 1
ISSUES — MODES OF TRIAL — POSTPONEMENT

Sec.

10-101 — 10-110. [Repealed.]

10-111. Amount sought for damages not disclosed to jury.

§ 10-101, 10-102. Issue defined — Issues of law. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 357, 358; R.S., R.C., & C.L., § 4365, 4366; C.S., §§ 6833, 6834; I.C.A., §§ 7-101, 7-102, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 7(c), 12(b) to 12(d).

§ 10-103. Issues of fact. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 359; R.S., R.C., & C.L., § 4367; C.S., § 6835; I.C.A., § 7-103, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 12(b) to 12(c).

§ 10-104. Trial of issues of law. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 360; R.S., R.C., & C.L., § 4368; C.S., § 6836; I.C.A., § 7-104, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 12(c), 12(d), 53(b).

§ 10-105. Trial of issues of fact. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 361; R.S., R.C., & C.L., § 4369; C.S., § 6837; I.C.A., § 7-105, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 38(a) to 38(d), 39(a) to 39(c), 53(b).

§ 10-106. Plea of abatement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.S., § 6837A, as added by 1931, ch. 10, § 1, p. 14; I.C.A., § 7-106, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 7(c), 12(b), 42(b).

§ 10-107. Entry of causes on calendar. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 362; R.S., R.C., & C.L., § 4370; C.S., § 6838; I.C.A., § 7-107, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 40(b).

§ 10-108. Bringing issues to trial. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 363; R.S., R.C., & C.L., § 4371; C.S., § 6839; I.C.A., § 7-108, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 40(b), 55(a)(1).

§ 10-109. Continuance for absence of evidence. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 364; R.S., R.C., & C.L., § 4372; C.S., § 6840; I.C.A., § 7-109, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 56(f).

§ 10-110. Depositions for continuance for absence of evidence. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 365; R.S., R.C., & C.L., § 4373; C.S., § 6841; I.C.A., § 7-110, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 56(f).

§ 10-111. Amount sought for damages not disclosed to jury. — In any civil action for damages, the amount of general damages sued for shall not be disclosed to the jury by court, counsel or any party and it shall be grounds for mistrial for any person to violate the prohibition of this act whether by specific statements or generalized argument. In furtherance of the provisions of this act it is declared that it is the exclusive province of the jury in a civil action for money damages involving allegations of general damages to resolve such issues of fact and it is against the policy of the state of Idaho for the jurors required to make such determinations to be informed of the particulars of allegations of damages in the pleadings on file with the court, by the arguments of counsel or otherwise, the dollar amount appraisal or evaluation of such damages being the exclusive province of the trier of fact; provided, this act shall not be construed to prohibit proof of damages or presentation of arguments which are legally relevant and proper in view of the record and issues before the court in any action for money damages.

History.

1976, ch. 275, § 1, p. 949.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1976, ch. 275 which is compiled as this section.

Effective Dates.

Section 2 of S.L. 1976, ch. 275 declared an emergency. Approved March 31, 1976.

CASE NOTES

Attempts to correct.

Violation not tolerated.

Attempts to Correct.

Once this section has been violated, attempts to correct it only reemphasize the improper influences raised in the minds of jurors. Robertson v. Richards, 115 Idaho 628, 769 P.2d 505 (1989).

Violation Not Tolerated.

An attorney's intentional, inflammatory, and unfair tactic to violate the statute and confuse and unfairly prejudice the jury should not be tolerated; such tactics require the firm application of this section which requires a mistrial and leaves no discretion to the trial court judge. Robertson v. Richards, 115 Idaho 628, 769 P.2d 505 (1989).

Cited Yacht Club Sales & Serv., Inc. v. First Nat'l Bank, 101 Idaho 852, 623 P.2d 464 (1980); Leliefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983); Quick v. Crane, 111 Idaho 759, 727 P.2d 1187 (1986).

Idaho Code Ch. 2

Chapter 2
TRIAL BY JURY

Sec.

10-201 — 10-224. [Repealed.]

§ 10-201. Impaneling the jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 366; R.S., R.C., & C.L., § 4378; C.S., § 6842; I.C.A., § 7-201, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 47(e), 47(g).

§ 10-202. Challenge of jurors. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 367; R.S., R.C., & C.L., § 4379; C.S., § 6843; I.C.A., § 7-202, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho R. Civ. P. 47(j), 47(k).

§ 10-203. Challenge for cause. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 368; R.S., R.C., & C.L., § 4380; C.S., § 6844; I.C.A., § 7-203; am. 1933, ch. 61, § 1, p. 98, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 47(h).

§ 10-204. Trial of challenges. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 369; R.S., R.C., & C.L., § 4381; C.S., § 6845; I.C.A., § 7-204, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 47(i).

§ 10-205. Swearing of jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 370; R.S., R.C., & C.L., § 4383; C.S., § 6846; I.C.A., § 7-205, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 47(m).

§ 10-206. Order of trial. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 371; R.S., § 4383; am. 1907, p. 166, § 1; reen. R.C. & C.L., § 4383; C.S., § 6847; I.C.A., § 7-206, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 51(a)(1).

§ 10-207. Charge to jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 372; R.S., R.C., & C.L., § 4384; C.S., § 6848; I.C.A., § 7-207, was repealed by S. L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 51(a)(1).

§ 10-208. Requests for instructions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 373; R.S., R.C., & C.L., § 4385; C.S., § 6849; I.C.A., § 7-208, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 51(a)(1), 51(b).

§ 10-209. View of premises. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 374; R.S., R.C., & C.L., § 4386; C.S., § 6850; I.C.A., § 7-209, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 43(f).

§ 10-210. Separation of jury — Admonition by court. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 375; R.S., § 4387; am. 1901, p. 216, § 1; R.C. & C.L., § 4387; C.S., § 6851; I.C.A., § 7-210, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 47(n).

§ 10-211. Taking papers to jury room. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 376; R.S., R.C., & C.L., § 4388; C.S., § 6852; I.C.A., § 7-211, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 47(o), 47(p).

§ 10-212. Deliberations of jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 377; R.S., R.C., & C.L., § 4389; C.S., § 6853; I.C.A., § 7-212, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-213. Additional instructions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 378; R.S., R.C., & C.L., § 4390; C.S., § 6854; I.C.A., § 7-213, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 51(b).

§ 10-214. Sickness of juror — Procedure. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 379; R.S., R.C., & C.L., § 4391; C.S., § 6855; I.C.A., § 7-214, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 47(*l*).

§ 10-215. Disagreement of jury — Retrial. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 380; R.S., R.C., & C.L., § 4392; C.S., § 6856; I.C.A., § 7-215, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-216. Adjournment of court during retirement — Sealed verdict — Discharge upon final adjournment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 381; R.S., R.C., & C.L., § 4393; C.S., § 6857; I.C.A., § 7-216, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 48(b), 77(a).

§ 10-217. Rendition of verdict — Polling of jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 382; R.S., R.C., & C.L., § 4392; C.S., § 6858; I.C.A., § 7-217, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 48(b).

§ 10-218 — 10-221. Informal verdicts — General and special verdicts — Rendition of special verdicts — Verdict in money action. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 383-386; R.S., R.C., & C.L., §§ 4395-4398; C.S., §§ 6859-6862; I.C.A., §§ 7-218 — 7-221, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 13(c), 49(a), 49(b).

§ 10-222. Verdict on claim and delivery. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 387; R.S., R.C., & C.L., § 4399; C.S., § 6863; I.C.A., § 7-222, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 49(a).

§ 10-223. Entry of verdict. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 388; R.S., R.C., & C.L., § 4400; C.S., § 6864; I.C.A., § 7-223, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-224. Judgment notwithstanding verdict. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.S., § 6864A, as added by 1931, ch. 27, § 1, p. 55; I.C.A., § 7-224, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 50(b).

Idaho Code Ch. 3

Chapter 3
TRIALS TO THE COURT

Sec.

10-301 — 10-305. [Repealed.]

§ 10-301. Waiver of trial by jury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 389; R.S., R.C., & C.L., § 4405; C.S., § 6865; I.C.A., § 7-301, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 38(b), 38(d).

§ 10-302. Trial of question of fact — Decision of court. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 390; R.S., R.C., & C.L., § 4406; C.S., § 6866; I.C.A., § 7-302, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Civil Procedure Rule 52(a).

§ 10-303. Findings of law and fact separately stated. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 391; R.S., R.C., & C.L., § 4407; C.S., § 6867; I.C.A., § 7-303, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho Civil Procedure Rule 52(a).

§ 10-304. Waiver of findings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 392; R.S., R.C., & C.L., § 4408; C.S., § 6868; I.C.A., § 7-304, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 52(a).

§ 10-305. Judgment upon issues of law. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 393; R.S., R.C., & C.L., § 4409; C.S., § 6869; I.C.A., § 7-305, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho R. Civ. P. 52(a), 54(c).

Chapter 4
REFERENCES AND TRIALS BY REFEREES

Sec.

10-401 — 10-408. [Repealed.]

§ 10-401 — 10-408. References and trials by referees. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 394-401; R.S., R.C., & C.L., §§ 4414-4421; C.S., §§ 6870-6877; I.C.A., §§ 7-401 — 7-408, were repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 53(a)(1) to 53(e)(5).

Idaho Code Ch. 5

Chapter 5
EXCEPTIONS

Sec.

10-501 — 10-509. [Repealed.]

§ 10-501 — 10-503. Definition and manner of taking — Exception — Form. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 403, 404; R.S., R.C., & C.L., §§ 4426-4428; am. 1911, ch. 227, § 1, p. 781; reen. C.L., § 4427; C.S., §§ 6878-6880; am. 1925, ch. 9, § 1, p. 11; I.C.A., §§ 7-501 — 7-503; am. 1947, ch. 109, § 1, p. 225, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 46.

§ 10-504 — 10-507. Settlement of exceptions — After judgments. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 405-408; R.S., R.C., & C.L., §§ 4429-4432; C.S., §§ 6881-6884; I.C.A., §§ 7-504 — 7-507, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 46, 83(a) to 83(y).

§ 10-508. Settlement by officer other than judge — Settlement after term of office — Settlement by supreme court. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 409; R.S., R.C., & C.L., § 4433; C.S., § 6885; I.C.A., § 7-508, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 63.

§ 10-509. Reporter's transcript. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.C., § 4434, as added by 1911, ch. 119, p. 379; reen. C.L., § 4434; C.S., § 6886; am. 1925, ch. 111, § 3, p. 157; am. 1927, ch. 33, § 1, p. 42; I.C.A., § 7-509, was repealed by S.L. 1977, ch. 170, § 3.

Idaho Code Ch. 6

Chapter 6
NEW TRIALS

Sec.

10-601 — 10-609. [Repealed.]

§ 10-601. New trial defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 410; R.S., R.C., & C.L., § 4438; C.S., § 6887; I.C.A., § 7-601, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 59(a).

§ 10-602. Grounds for new trial — Judgment notwithstanding the verdict. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 411; R.S., R.C., & C.L., § 4439; C.S., § 6888; am. 1931, ch. 12, § 1, p. 15; I.C.A., § 7-602, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 50(b), 50(c), 59(a).

§ 10-603. Application for new trial. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 412; R.S. & R.C., § 4440; am. 1911, ch. 118, § 1, p. 337; reen. C. L., § 4440; C.S., § 6889; I.C.A., § 7-603, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 59(c).

§ 10-604. Notice of intention. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 413; R.S. & R.C., § 4441; am. 1911, ch. 118, § 2, p. 377; reen. C. L., § 4441; am. 1919, ch. 108, § 1, p. 390; C.S. § 6890; I.C.A., § 7-604, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 5(a), 50(c), 59(b), 59(c).

§ 10-605. Hearing of motion. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 414; R.S. & R.C., § 4442; am. 1881, ch. 118, § 3, p. 378; reen. C. L., § 4442; C.S., § 6891; am. 1931, ch. 9, § 1, p. 13; I.C.A., § 7-605, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 59(a), 59(b), 59(c).

§ 10-606. Ruling of motion. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.S., § 6891A, as added by 1931, ch. 28, § 1, p. 56; I.C.A., § 7-606, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 50(c), 52(b), 59(a).

§ 10-607. Record on appeal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 415; R.S. & R.C., § 4443; am. 1911, ch. 118, § 4, p. 378; reen. C.L., § 4443; C.S., § 6892; I.C.A., § 7-607, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-608. New trial on motion of court. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 416; R.S. & R.C., § 4444; am. 1911, ch. 118, § 5, p. 378; reen. C. L., § 4444; C.S., § 6893; I.C.A., § 7-608, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 59(d).

§ 10-609. Hearing in court or at chambers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 4445; C.S., § 6894; I.C.A., § 7-609, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 77(b).

Idaho Code Ch. 7

Chapter 7
JUDGMENT IN GENERAL

Sec.

10-701 — 10-706. [Repealed.]

§ 10-701. Judgment defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 350; R.S., R.C., & C.L., § 4350; C.S., § 6826; I.C.A., § 7-701, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(a).

§ 10-702. Judgment as between several parties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 351; R.S., R.C., & C.L., § 4351; C.S., § 6827; I.C.A., § 7-702, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(b).

§ 10-703. Judgment against one of several defendants. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 352; R.S., R.C., & C.L., § 4352; C.S., § 6828; I.C.A., § 7-703, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(b).

§ 10-704. Extent of relief. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 353; R.S., R.C., & C.L., § 4353; C.S., § 6829; I.C.A., § 7-704, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 54(b), 54(c).

§ 10-705. Dismissal or nonsuit. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 354; R.S., R.C., & C.L., § 4354; C.S., § 6830; am. 1931, ch. 13, § 1, p. 16; I.C.A., § 7-705, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 13(i), 23(c), 41(a)(1) to 41(d), 50(a), 73.

§ 10-706. Judgment on merits. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 355; R.S., R.C., & C.L., § 4355; C.S., § 6831; I.C.A., § 7-706, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 41(a)(2), 41(b).

Chapter 8
JUDGMENT UPON FAILURE TO ANSWER

Sec.

10-801. Entry of judgment by default. [Repealed.]

§ 10-801. Entry of judgment by default. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 356; R.S., R.C., & C.L., § 4360; C.S., § 6832; am. 1921, ch. 162, § 1, p. 358; I.C.A., § 7-801, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 54(c), 55(a)(1) to 55(b)(2), 55(d).

Idaho Code Ch. 9

Chapter 9
CONFESSION OF JUDGMENT WITHOUT ACTION

Sec.

10-901 — 10-904. [Repealed.]

§ 10-901 — 10-903. Judgment by confession — Filing statement — Entry of judgment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, § 776; R.S., R.C., & C.L., § 5060; C.S., § 7301; I.C.A., § 7-901, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 3(a).

§ 10-904. Entry of judgment in probate or justice's court. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 779; R.S., R.C., & C.L., § 5063; C.S., § 7304; I.C.A., § 7-904, was repealed by S.L. 1969, ch. 111, § 24, effective at 12:01 a.m. on January 11, 1971, and by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

Idaho Code Ch. 10

Chapter 10
SUBMITTING CONTROVERSY WITHOUT ACTION

Sec.

10-1001 — 10-1003. [Repealed.]

§ 10-1001 — 10-1003. Mode of submission — Entry of judgment — Enforcement — Appeal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 780-782; R.S., R.C., & C.L., §§ 5068-5070; C.S., §§ 7305-7307; I.C.A., §§ 7-1001 — 7-1003, were repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 3(a).

Idaho Code Ch. 11

Chapter 11
MANNER OF GIVING AND ENTERING JUDGMENT — LIEN AND SATISFACTION

Sec.

10-1101 — 10-1105. [Repealed.]

10-1106. Death after verdict — Entry and effect of judgment.

10-1107 — 10-1109. [Repealed.]

10-1110. Filing transcript of judgments — Lien acquired.

10-1111. Orders renewing judgment — Lien.

10-1112 — 10-1114. [Repealed.]

10-1115. Additional procedure for satisfaction of judgment — Disposition of money.

§ 10-1101. Time for entering judgment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 418; R.S., R.C., & C.L., § 4450; C.S., § 6895; I.C.A., § 7-1101, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 58(a), 62(a) to 62(g).

§ 10-1102. Argument on reserved point. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 419; R.S., R.C., & C.L., § 4451; C.S., § 6896; I.C.A., § 7-1102, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-1103. Affirmative judgment for defendant. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 420; R.S., R.C., & C.L., § 4452; C.S., § 6897; I.C.A., § 7-1103, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 13(c), 54(b).

§ 10-1104. Form of judgment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 421; R.S., R.C., & C.L., § 4453; C.S., § 6898; I.C.A., § 7-1104, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 58(a).

§ 10-1105. Judgment book. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 422; R.S. & R.C., § 4454; am. 1917, ch. 110, § 1, p. 389; reen. C.L., § 4454; C.S., § 6899; I.C.A., § 7-1105, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 58(a).

§ 10-1106. Death after verdict — Entry and effect of judgment. — If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

History.

C.C.P. 1881, § 423; R.S., R.C., & C.L., § 4455; C.S., § 6900; I.C.A., § 7-1106.

CASE NOTES

Appeal.

Denial of default judgment.

Judgment not entered.

Appeal.

The district court trying de novo objections to a guardian's sale of real estate on appeal from the probate court could enter findings of fact, conclusions of law, and judgment notwithstanding the death of the ward after the trial and before such entry. Knudson v. Bank of Idaho, 91 Idaho 923, 435 P.2d 348 (1967).

Denial of Default Judgment.

Since bank, seeking to foreclose on mortgage securing promissory note, did not move for default judgment until after the death of mortgagee and twice before trial the district judge gave bank the opportunity to substitute a representative of the estate, the court did not abuse its discretion in denying motion for default judgment. First Idaho Corp. v. Davis, 867 F.2d 1241 (9th Cir. 1989).

Judgment Not Entered.

Under this section, the court could not enter judgment against a deceased party when no substitution of parties was made and a verdict or decision has

not been reached by the court. First Idaho Corp. v. Davis, 867 F.2d 1241 (9th Cir. 1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judgments, § 89.

C.J.S. — 49 C.J.S., Judgments, § 155 et seq.

§ 10-1107. Judgment roll — Contents. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 424; R.S. & R.C., § 4456; am. 1909, p. 76, § 1; reen. C.L., § 4456; C.S., § 6901; am. 1921, ch. 152, § 1, p. 344; am. 1931, ch. 173, § 1, p. 288; I.C.A., § 7-1107, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 58(a).

§ 10-1108. Indorsement of judgment in docket. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 425; R.S. & R.C., § 4457; am. 1913, ch. 22, § 1, p. 91; reen. C.L., § 4457; C.S., § 6902; am. 1929, ch. 51, § 1, p. 70; I.C.A., § 7-1108; am. 1949, ch. 146, § 1, p. 301; am. 1957, ch. 236, § 1, p. 566, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 58(a).

§ 10-1109. State and federal court judgments — Lien. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.S., § 6902A, as added by 1929, ch. 51, § 2, p. 70; I.C.A., § 7-1109, was repealed by S.L. 1955, ch. 45, § 2, p. 63.

Idaho Code § 10-1110

§ 10-1110. Filing transcript of judgments — Lien acquired. — A transcript or abstract of any judgment or decree of any court of this state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. The lien resulting from recording of a judgment other than for support of a child or for restitution owed to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues ten (10) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a judgment for support of a child issued by an Idaho court continues until ten (10) years after the death or emancipation of the last child for whom support is owed under the judgment unless the underlying judgment is renewed, is previously satisfied or the enforcement of the judgment is stayed upon an appeal as provided by law. A lien arising from an order for restitution to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code, continues until twenty (20) years from the date of the judgment, unless the judgment be previously satisfied, or unless the judgment is stayed or set aside. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry and amount of judgment.

History.

C.S., § 6902B, as added by 1929, ch. 51, § 3, p. 70; I.C.A., § 7-1110; am. 1955, ch. 45, § 1, p. 63; am. 1963, ch. 209, § 1, p. 598; am. 1995, ch. 264, § 2, p. 846; am. 1998, ch. 68, § 1, p. 261; am. 2011, ch. 104, § 2, p. 267; am. 2015, ch. 139, § 1, p. 343; am. 2015, ch. 278, § 4, p. 1137.

STATUTORY NOTES

Cross References.

Certified copy of judgment may be recorded without further proof, § 55-802.

Clerk's fee for docketing abstract or transcript of judgment from another court, § 31-3201.

Eminent domain, delivery of money to defendant upon his filing satisfaction of judgment, § 7-717.

Eminent domain, final order of condemnation, copy to be filed in office of county recorder, § 7-716.

Recording of judgment in original county when venue changed in actions affecting real estate, § 5-409.

Amendments.

The 2011 amendment, by ch. 104, rewrote the third sentence, which formerly read: "A lien arising from the delinquency of a payment due under a recorded judgment for support of a child after July 1, 1995, continues twenty-three (23) years from the date of judgment unless the judgment be previously satisfied or unless the enforcement of the judgment be stayed upon an appeal as provided by law"; and deleted the former fourth and fifth sentences, which read: "Provided, that no lien for child support shall continue more than five (5) years after the child reaches the age of majority or five (5) years after the child's death, whichever shall first occur. If the recorded judgment is for the support of more than one (1) child, the lien shall continue until five (5) years after the youngest child reaches the age of majority or five (5) years after the death of the last remaining child, whichever shall first occur."

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 139, inserted "or for restitution owed to a crime victim where the order of restitution has been recorded as a judgment pursuant to section 19-5305, Idaho Code" in the second sentence and added the fourth sentence.

The 2015 amendment, by ch. 278, substituted "ten (10) years" for "five (5) years" in the second and third sentences.

Compiler's Notes.

Section 4 of S.L. 2011, ch. 104 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 3 of S.L. 1955, ch. 45 declared an emergency. Approved February 17, 1955.

Section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to July 1, 1995, and shall apply to all orders currently being enforced by the Idaho Department of Health and Welfare Child Support Program such that any Idaho judgment for child support that would otherwise have expired since July 1, 1995, may be renewed on or before December 30, 2011."

Section 6 of S.L. 2015, ch. 278, provided that the act should take effect on and after July 1, 2015, and shall apply only to judgments issued on and after July 1, 2015, by a court of competent jurisdiction.

CASE NOTES

Conveyance of exempt property.

Deficiency judgment.

Failure to record.

Homestead exemption.

Insufficiency in writ of execution.

Interest in executory contract.

Judgment.

Lien by operation of law.

Limitation.

Mortgage.

Nature of lien.

Perfection of foreign judgment.

Procedure required.

Renewed judgment lien.

Sale of debtor's property.

Supplemental proceedings to assert claims.

Support installments.

When lien does not attach.

Conveyance of Exempt Property.

Contention that the transfer of the homestead property by entryman and his voluntary petition for bankruptcy is a fraud upon his creditors is without merit, since a creditor who complains must show that the property was amenable to his debt; since the homestead property was exempt from execution before the transfer, then a creditor who could not reach it was not by such transfer deprived of any rights. St. Marie v. Chester B. Brown Co., 84 Idaho 216, 370 P.2d 195 (1962).

Deficiency Judgment.

If a deficiency judgment is obtained in due course by a mortgagee pursuant to § 6-108, that deficiency judgment would be subject to the recording provisions of this section; in this way, the law protects property not subject to the mortgage unless the value of the mortgaged property is exhausted. Federal Land Bank v. Parsons, 118 Idaho 324, 796 P.2d 533 (Ct. App. 1990).

Failure to Record.

Where the record shows that no request was made nor fees tendered to the recorder to have an abstract, transcript or copy of the judgment filed with the recorder at the time it was entered in the judgment book, it was the determination of the court that no lien was created by the judgment superior to the homestead declaration since the judgment had not been tendered with fees to recorder of the county for entry into the reception book before the declaration of homestead was filed for record. Messenger v. Burns, 86 Idaho 26, 382 P.2d 913 (1963).

Homestead Exemption.

Where creditor recorded a judgment in the county recorder's office in July 2010, a judgment lien in favor of the creditor would attach to all of debtor's after-acquired property in that county until the judgment is satisfied or lapses. When debtor purchased a home in the county in September 2010, creditor's lien affixed to the property immediately. Thus, although debtor filed a homestead declaration two days later, the property was not exempt from execution because of the priority of the judgment lien. In re Bailey, 2011 Bankr. LEXIS 1528 (Bankr. D. Idaho Apr. 26, 2011).

Insufficiency in Writ of Execution.

Where a magistrate court, having before it a copy of a foreign judgment which had been filed in that court and recorded in the recorder's office, issued a writ of execution with regard to said judgment, and where said magistrate court also had a copy of the requisite affidavit, a copy of the notice to the judgment creditors, and a copy of the clerk's certificate indicating that the judgment had been recorded, and where the judgment debtors were not a party to a subsequent action concerning the issuance of said writ, with regard to that subsequent action, an irregularity in the writ or its issuance was not sufficient to render it void. Westmark Fed. Credit Union v. Smith, 116 Idaho 474, 776 P.2d 1193 (1989).

Interest in Executory Contract.

A vendee's interest under an executory contract to purchase real property — where the contract or a notice containing the names of the contracting parties and the description of the property is recorded — is included within the meaning of "all real property of the judgment debtor" against which a

recorded judgment imposes a lien under this section. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

Recording a judgment does impose a judgment lien on a vendee's interest under an executory land sale contract where the contract, or a notice thereof containing the names of the parties and a description of the property, has been recorded. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

A vendee's interest in a contract is an interest in real property within the meaning of this section, against which a recorded judgment does impose a lien if the contract has been duly recorded or where a "notice" of the contract — containing the names of the contracting parties and the legal description of the property — has been recorded. Fulton v. Duro, 108 Idaho 392, 700 P.2d 14 (1985).

Judgment.

Default judgments, which only partially adjudicate the controversy in a multi-party case, are not "judgments" for purposes of considering the time for renewal under § 10-1111 and this section, because, by their nature, they are not final determinations of the rights and obligations of all parties in the dispute. Bach v. Dawson, 152 Idaho 237, 268 P.3d 1189 (Ct. App. 2012).

Lien by Operation of Law.

The lien of judgment attached to real property by operation of law and not by reason of the voluntary action of the judgment debtor. St. Marie v. Chester B. Brown Co., 84 Idaho 216, 370 P.2d 195 (1962).

Idaho law operated to create a judicial lien on debtor's property in favor of the creditor upon the domestication and recordation of the final, unappealed California order. In re Hyatt, 2011 Bankr. LEXIS 4849 (Bankr. D. Idaho Dec. 9, 2011).

This section does not mandate recording for a judgment to be valid. But from the time of recording, the judgment becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien. Smith v. Smith, 164 Idaho 46, 423 P.3d 998 (2018).

Limitation.

Pursuant to section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1, the bureau of child support of the Idaho department of health and welfare could file a motion to renew a 1998 judgment against a parent for unpaid child support in August 2011, even though, before the legislative change, any action to collect unpaid child support arrearages would have had to have been commenced by April 2007, five years after child reached the age of majority. Peterson v. Peterson, 156 Idaho 85, 320 P.3d 1244 (2014).

Mortgage.

A mortgage is not real property subject to a judgment lien. McKay v. Walker, 160 Idaho 148, 369 P.3d 926 (2016).

Nature of Lien.

A judgment lien is purely a creature of statute and does not exist in the body of our common law; therefore, the respective rights of parties to a suit must be adjudicated within the framework of the applicable statute. Messenger v. Burns, 86 Idaho 26, 382 P.2d 913 (1963).

The lien of a judgment, recorded after the sale of real estate on instalment contract but before completion of the payments under such contract and conveyance of the real estate pursuant thereto, attached to paid-in purchase money being held in escrow. First Sec. Bank v. Rogers, 91 Idaho 654, 429 P.2d 386 (1967).

Where judgment liens of two creditors attached to property at recordation, in 1983 and 1984, as debtor owned no interest in property before liens attached, the fixing of the liens could not be avoided even though debtor's subsequent divorce decree created sole and separate ownership interest to property in favor of debtor. In re Mingo, 189 Bankr. 514 (Bankr. D. Idaho 1995).

Perfection of Foreign Judgment.

A foreign judgment may be perfected in Idaho by the filing of a duly authenticated copy of the judgment in the office of the clerk of a court, pursuant to § 10-1303, together with an affidavit containing the name and address of the judgment debtor and of the judgment creditor, and notice of

that filing shall be mailed to the judgment debtor where, upon recording, that judgment becomes a lien upon real property. Westmark Fed. Credit Union v. Smith, 116 Idaho 474, 776 P.2d 1193 (1989).

Procedure Required.

In order to give full effect to the words and changes of the amendment made by the Laws of 1955, the creation of a judgment lien necessitates that a transcript or abstract of the judgment, certified by the clerk (or the original judgment as an "in county" judgment), be "filed with the clerk" of the district court, "who shall immediately file and docket the same as by law provided" and further necessitates that said abstract or transcript certified by the clerk be "filed with the . . . recorder," who likewise "shall immediately file and docket the same as by law provided," i.e., entered in the reception book maintained by the recorder. Messenger v. Burns, 86 Idaho 26, 382 P.2d 913 (1963).

Renewed Judgment Lien.

Since plaintiff's renewed judgment lien was allowed to lapse and was not re-perfected until it was appropriately recorded, the rerecordation date was the date which then became the priority date for plaintiff's interest in the subject property. Amato v. United States, 94 F. Supp. 2d 1077 (D. Idaho 1999).

When a homebuyer tried to enforce a Utah judgment against a builder's Idaho property, the builder was properly granted summary judgment because, inter alia, one basis for relief for the homebuyer was execution of a judgment lien based on the foreign judgment, but the judgment lien expired five [now 10] years after the entry of the judgment, and the homebuyer never tried to renew the lien or obtain a new lien. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

Section 10-1111 does not provide that a judgment lien may be renewed within five [now 10] years after the judgment is recorded. Section 10-1111 incorporates the time period specified in this section, under which a non-child-support judgment lien continues five years from the date of the judgment. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

Sale of Debtor's Property.

Once the judgment debtor's property was sold at execution and the certificate of sale was delivered to the execution purchaser, conveying legal title to him, the creditor lost her judgment lien against the property sold. Suchan v. Suchan, 113 Idaho 102, 741 P.2d 1289 (1986).

Supplemental Proceedings to Assert Claims.

In an action to foreclose mortgage, where only evidence of defendant's alleged interest in resort property was the self-serving testimony in defendant's deposition, and where defendant made no effort to appear and assert his claim, the trial court's findings that defendant's judgment creditors had proved that defendant owned an interest in the disputed property and that plaintiff had agreed to pay him for such interest were not supported by substantial evidence. Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc., 97 Idaho 572, 548 P.2d 72 (1976).

Support Installments.

The legislature implicitly has recognized the status of support installments as judgments when they come due. Hunsaker v. Hunsaker, 117 Idaho 192, 786 P.2d 583 (Ct. App. 1990).

The district court committed no error in holding that interest accrues at the judgment rate from the due date on delinquent child support installments. Hunsaker v. Hunsaker, 117 Idaho 192, 786 P.2d 583 (Ct. App. 1990).

When Lien Does Not Attach.

When a voluntary encumbrance or lien is placed on the land by the entryman, the lien attaches to the entryman's interest, but this is not true on a default judgment, even though it is a voluntary impression of the judgment lien on the homestead permitted by the entryman. St. Marie v. Chester B. Brown Co., 84 Idaho 216, 370 P.2d 195 (1962).

A judgment lien cannot attach to the property for debts incurred prior to patent and if the entryman should sell, his purchaser takes the property free from claim of lien. St. Marie v. Chester B. Brown Co., 84 Idaho 216, 370 P.2d 195 (1962).

Where a debtor and her husband purchased a property as a married couple and resided there as their principal residence, the property was

automatically protected by a homestead exemption under § 55-1004, and a creditor's judgment, which was recorded thereafter, did not attach as a judgment lien pursuant to this section. However, when the debtor quitclaimed her interest to her husband and then he later quitclaimed her interest back, the judgment lien attached to her new interest at the same that she reacquired that interest. Because those acts occurred simultaneously, the debtor did not have an ownership interest, or a homestead exemption, prior to the lien affixing, and the property was subject to the judgment lien under § 55-1005. In re Hassler, 2011 Bankr. LEXIS 1880 (Bankr. D. Idaho May 17, 2011).

Cited Lewis v. Warren & Anderson Furniture Co., 31 Idaho 4, 168 P. 1142 (1917); Jardine v. Bennett's Eastside Paint & Glass, 120 Bankr. 559 (Bankr. D. Idaho 1990); In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991); G & R Petro., Inc. v. Clements, 127 Idaho 119, 898 P.2d 50 (1995); Hopkins v. Thomason Farms, Inc. (In re Thomason), Case No. 03-42400, 2009 Bankr. LEXIS 1769 (Bankr. D. Idaho June 24, 2009); In re Marcovitz, 2011 Bankr. LEXIS 4132 (Bankr. D. Idaho Oct. 25, 2011).

Decisions Under Prior Law

Filing and Recording.

It is not necessary, in order to create a lien upon real estate of the judgment debtor, that the certified transcript of the original docket be recorded; filing of the transcript to be recorded is sufficient to create the lien. Moore v. Taylor, 1 Idaho 630 (1876).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judgments, § 342 et seq.

C.J.S. — 49 C.J.S., Judgments, § 162 et seq.

ALR. — Interest of vendee under executory contract as subject to execution, judgment lien, or attachment. 1 A.L.R.2d 727.

Subjection of community property or interest therein to lien of judgment for personal tort of spouse. 10 A.L.R.2d 988.

Solid mineral royalty as real or personal property for purposes of lien of judgment. 68 A.L.R.2d 735.

Interest of spouse in estate by entireties as subject to judgment lien and satisfaction of his or her individual debt. 75 A.L.R.2d 1172.

Issuance of levy of execution as extending period of judgment lien. 77 A.L.R.2d 1064.

§ 10-1111. Orders renewing judgment — Lien. — (1) Unless the judgment has been satisfied, at any time prior to the expiration of the lien created by section 10-1110, Idaho Code, or any renewal thereof, the court that entered the judgment, other than a judgment for child support, may, upon motion, renew such judgment by entry of an order renewing judgment. The order renewing judgment may be recorded in the same manner as the original judgment, and the lien established or continued thereby shall continue for ten (10) years from the date of the order renewing judgment. Entry of an order renewing judgment maintains both the date of the original judgment and the priority of collection thereof, and it begins anew the time limitation for an action upon a judgment set forth in section 5-215, Idaho Code.

(2) Unless the judgment has been satisfied, and prior to the expiration of the lien created in section 10-1110, Idaho Code, or any renewal thereof, a court that has entered a judgment for child support may, upon motion, renew such judgment by entry of an order renewing judgment. The entry of an order renewing judgment shall not affect the manner of enforcement of the original judgment, and the lien established or continued thereby shall continue for ten (10) years from the date of the order renewing judgment. Entry of an order renewing judgment maintains both the date of the original judgment and the priority of collection thereof, and it begins anew the time limitation for an action upon a judgment set forth in section 5-215, Idaho Code.

History.

I.C., § 10-1111, as added by 1978, ch. 115, § 1, p. 266; am. 1995, ch. 264, § 3, p. 846; am. 2011, ch. 104, § 3, p. 267; am. 2016, ch. 269, § 1, p. 724; am. 2017, ch. 177, § 1, p. 407; am. 2018, ch. 284, § 1, p. 672.

STATUTORY NOTES

Prior Laws.

Former § 10-1111, which comprised C.C.P. 1881, § 426; R.S., R.C., & C.L., § 4458; C.S., § 6903; I.C.A., § 7-1111, was repealed by S.L. 1975, ch.

242, § 1, effective March 31, 1975.

Amendments.

The 2011 amendment, by ch. 104, added the subsection (1) designation and added subsection (2).

The 2016 amendment, by ch. 269, substituted "ten (10) years" for "five (5) years" in the last sentence in subsection (1).

The 2017 amendment, by ch. 177, in subsection (1), inserted "the renewed" near the end of the last sentence.

The 2018 amendment, by ch. 284, substituted "Orders renewing" for "Renewal of" in the section heading; substituted "order renewing judgment" or similar language for "renewed judgment" throughout the section; in subsections (1) and (2), substituted "order renewing judgment" for "renewed judgment" added "by entry of an order renewing judgment" following "renew such judgment" at the end of the first sentence, inserted "or continued" following "established" in the second sentence, and added the last sentence.

Compiler's Notes.

Section 4 of S.L. 2011, ch. 104 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 2 of S.L. 1978, ch. 115 declared an emergency. Approved March 14, 1978.

Section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to July 1, 1995, and shall apply to all orders currently being enforced by the Idaho Department of Health and Welfare Child Support Program such that any Idaho judgment for child support that would otherwise have expired since July 1, 1995, may be renewed on or before December 30, 2011."

Section 3 of S.L. 2016, ch. 269 declared an emergency and made this section retroactive to July 1, 2015, and applicable only to judgments issued on and after July 1, 2015, by a court of competent jurisdiction. Approved March 30, 2016.

Section 2 of S.L. 2017, ch. 177 declared an emergency. Approved March 27, 2017.

CASE NOTES

Construction.

Judgment.

Construction.

This section does not require that a judgment be a lien on real property before such a judgment can be renewed under this section, as the express terms of this section provides for the renewal of judgments, not just judgment liens. Smith v. Smith, 131 Idaho 800, 964 P.2d 667 (Ct. App. 1998).

The five-year [now 10-year] time limit contained in this section sets the time limit for when a judgment creditor must take action to renew a judgment, such as filing a motion for renewal, and not as to when the court must enter an order extending a judgment. Smith v. Smith, 131 Idaho 800, 964 P.2d 667 (Ct. App. 1998).

Pursuant to section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1, the bureau of child support of the Idaho department of health and welfare could file a motion to renew a 1998 judgment against a parent for unpaid child support in August 2011, even though, before the legislative change, any action to collect unpaid child support arrearages would have had to have been commenced by April 2007, five years after child reached the age of majority. Peterson v. Peterson, 156 Idaho 85, 320 P.3d 1244 (2014).

Judgment.

Default judgments, which only partially adjudicate the controversy in a multi-party case, are not "judgments" for purposes of considering the time for renewal under § 10-1110 and this section, because, by their nature, they

are not final determinations of the rights and obligations of all parties in the dispute. Bach v. Dawson, 152 Idaho 237, 268 P.3d 1189 (Ct. App. 2012).

When a homebuyer tried to enforce a Utah judgment against a builder's Idaho property, the builder was properly granted summary judgment because, inter alia, one basis for relief for the homebuyer was execution of a judgment lien based on the foreign judgment, but the judgment lien expired five years [now 10 years] after the entry of the judgment, and the homebuyer never tried to renew the lien or obtain a new lien. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

Cited Smith v. Smith, 136 Idaho 120, 29 P.3d 956 (Ct. App. 2001); Smith v. Smith, 164 Idaho 46, 423 P.3d 998 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judgments, § 342 et seq.

C.J.S. — 50 C.J.S., Judgments, § 760 et seq.

§ 10-1112. Inspection of docket. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 427; R.S., R.C., & C.L., § 4459; C.S., § 6904; I.C.A., § 7-1112, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-1113. Entry of satisfaction. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 429; R.S., R.C., & C.L., § 4461; C.S., § 6906; I.C.A., § 7-1113, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 10-1114. Duty to satisfy judgment — Penalty. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1891, p. 119, § 3; reen. 1899, p. 80, § 3; reen. R.C., & C.L., § 4464; C.S., § 6909; am. 1929, ch. 51, § 4, p. 70; I.C.A., § 7-1114, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 58(b).

§ 10-1115. Additional procedure for satisfaction of judgment — Disposition of money. — As a further procedure for the satisfaction of a judgment, and in addition to the satisfaction of a judgment as provided by law or rule of court, any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, may pay the amount due on such judgment to the clerk of the court in which such judgment was rendered, and such clerk shall thereupon release and satisfy such judgment upon the records of said court and the county in which such judgment was rendered; and if such judgment has been entered in the records or docketed in any other county than the county in which it was rendered, then a certified copy of the release and satisfaction herein provided to be entered may be recorded in such other county, and the clerk of such other county shall thereupon release and satisfy such judgment upon the records of such other county. Unless the clerk of the court in which such judgment was rendered sooner turns over the money paid to him on such judgment to the person determined by such court to be entitled thereto, he shall turn the same over to the county treasurer of his county, who shall give said clerk duplicate receipts therefor; and one of said receipts shall be filed with the papers in the case in which such judgment was rendered, and the other shall be retained by said clerk. Said county treasurer shall at any time pay said money over to the person who shall be determined to be entitled thereto by the order of the court in which such judgment was rendered.

History.

1955, ch. 4, § 1, p. 6.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1955, ch. 4 declared an emergency. Approved January 26, 1955.

CASE NOTES

Appeal.

Construction.

Duty of clerk.

Interest.

Judgment satisfied.

Satisfaction of judgment.

Appeal.

Depositing funds with the clerk under the procedure of this section does not bar an appeal by the judgment debtor, unless the release of the funds is also authorized. Long v. Hendricks, 109 Idaho 73, 705 P.2d 78 (Ct. App. 1985).

Construction.

This section does not require a judgment debtor to provide additional documents or complete certain procedures in order to satisfy a judgment. Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998).

Duty of Clerk.

The duty of the clerk to declare the judgment satisfied is not abrogated by the filing of a notice of appeal by the judgment creditor. Long v. Hendricks, 109 Idaho 73, 705 P.2d 78 (Ct. App. 1985).

Interest.

A payment actually tendered without condition, and without prejudice to the judgment creditor's right to seek a larger award on appeal, will terminate the creditor's right to statutory interest on the existing judgment. Long v. Hendricks, 109 Idaho 73, 705 P.2d 78 (Ct. App. 1985).

Where the defendant's notice of tender of judgment authorized the clerk of the court to release the funds tendered to the court to the plaintiff upon the presentation of a satisfaction of judgment duly executed by the plaintiff, but the plaintiff did not attempt to test the "condition" by presenting the clerk with a partial satisfaction of judgment or by seeking a court order to release the funds unconditionally pursuant to this section, the plaintiff failed to establish that he would have been prejudiced by accepting the tendered

amount, and the tender of judgment barred the running of postjudgment interest on the original judgment. Long v. Hendricks, 109 Idaho 73, 705 P.2d 78 (Ct. App. 1985).

When a judgment debtor wishes to cut off the accrual of postjudgment interest, the tender of the amount of the judgment is sufficient. If by appealing the judgment creditor is not taking the risk of receiving less than the amount tendered, the judgment creditor may accept the tendered amount and continue with the appeal. If, however, the judgment creditor appeals the denial of a new trial and takes the risk of receiving less than the tendered amount, it is unfair to require the judgment debtor to pay postjudgment interest after the date of the tender, as the judgment debtor has no effective way of eliminating the obligation for postjudgment interest except by the tender. Long v. Hendricks, 117 Idaho 1051, 793 P.2d 1223 (1990).

Where the record showed that respondent tendered the amount of the judgment to appellant, thus complying with this section, appellant refused to accept the tender, and the parties later stipulated to the deposit of the check into an interest-bearing account, respondent was not required to pay statutory interest on the judgment during the pendency of respondent's cross-appeal. Curtis v. Canyon Hwy. Dist. No. 4, 122 Idaho 73, 831 P.2d 541 (1992), overruled on other grounds, Lawton v. City of Pocatello, 126 Idaho 454, 886 P.2d 330 (1994).

The trial court correctly determined that postjudgment interest on the award of prejudgment interest began to accrue on the date of the judgment containing that award. Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998).

Satisfaction should halt the accrual of not only postjudgment interest but also prejudgment interest as of the date of the deposit; after a judgment debtor unconditionally satisfies the judgment, both prejudgment and postjudgment interest should cease. Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998).

Judgment Satisfied.

Where defendant not only deposited funds representing the amount of the judgment against him with the district court but also authorized release of the funds to plaintiff, which release was ordered by the district court, the

judgment was satisfied and there could be no appeal. Bob Rice Ford, Inc. v. Donnelly, 98 Idaho 313, 563 P.2d 37 (1977).

Satisfaction of Judgment.

Defendants' deposit, when viewed as a whole, was not conditional because the accompanying letter clearly indicated defendants' intent to satisfy the judgment and to send additional monies, if necessary. Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998).

Cited Radioear Corp. v. Crouse, 97 Idaho 501, 547 P.2d 546 (1976); Quillin v. Quillin, 141 Idaho 200, 108 P.3d 347 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 804 et seq.

C.J.S. — 50 C.J.S., Judgments, § 869 et seq.

ALR. — Voluntary payment into court of judgment against one joint tortfeasor as release of others. 40 A.L.R.3d 1181.

Idaho Code Ch. 12

Chapter 12
DECLARATORY JUDGMENTS

Sec.

10-1201. Declaratory judgments authorized — Form and effect.

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§ 10-1201. Declaratory judgments authorized — Form and effect. — Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

History.

1933, ch. 70, § 1, p. 113.

STATUTORY NOTES

Cross References.

Arbitration, § 7-901 et seq.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

The provisions of §§ 10-1201 to 10-1216 are probably abrogated to the extent that the procedural requirements may be in conflict with the Idaho Rules of Civil Procedure. See Idaho R. Civ. P. 57.

CASE NOTES

Adverse parties — actual controversy.

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Standing.

Taxation.

When granted.

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Writs of prohibition.

Zoning.

Adverse Parties — Actual Controversy.

No judicial declaration is necessary or can be granted where there is no difference or threat, present or prospective, existing between the parties to the action or proceeding. State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935); Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937).

The Declaratory Judgment Act contemplates some specific adversary question or contention based on an existing state of facts, out of which the alleged "rights, status, and other legal relations" arise, upon which the court may predicate a judgment "either affirmative or negative in form and effect." State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935); Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938); Thomas v. Riggs, 67 Idaho 223, 175 P.2d 404 (1946); Ayers v. General Hosp., 67 Idaho 430, 182 P.2d 958 (1947).

There must be adverse parties and an actual controversy over the construction or validity of a statute or an instrument or other subject-matter coming properly within the purview of the Declaratory Judgment Act upon which the suit is based. Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937).

No adversary controversy was tendered where plaintiff alleged that the contract was valid and that defendant was competent to contract. Defendant admitted and asserted the same facts. Plaintiff alleged: "That there exists an uncertainty as to the ability and capacity of the defendant to contract, and that this action is brought to quiet from the said title such uncertainty, and under the uniform Declaratory Judgment Act." But it is nowhere alleged that defendant denies the contract or claims that he was incompetent to contract at the time it was executed, nor is it alleged that any member of his family, presumptive heir, or relative, who might be legally liable for his support, in case of his insanity and indigence, has questioned his competency or the validity of the contract. Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938).

If complaint for a declaratory judgment states a justiciable controversy, a general demurrer should be overruled. Grayot v. Summers, 75 Idaho 125, 269 P.2d 765 (1954).

The right sought to be protected by a declaratory judgment may invoke either remedial or preventive relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual

and existing facts. Harris v. Cassia County, 106 Idaho 513, 681 P.2d 988 (1984).

Attorney Fees.

Because insureds were not entitled to an award of attorney fees on an equitable basis, but were limited to exclusive statutory provisions regarding insurance coverage disputes, they were precluded from seeking an award for the cost of defending insurer's declaratory judgment suit under general fee statutes or the fee provisions of the uniform declaratory judgment statute. Allstate Ins. Co. v. Mocaby, 133 Idaho 593, 990 P.2d 1204 (1999).

Constitutionality of Statutes.

Declaratory judgment is the proper procedure to determine the constitutionality of a statute. Montejano v. Rayner, 33 F. Supp. 435 (D. Idaho 1939).

Damages.

In a declaratory judgment proceeding, the court has jurisdiction to construe a contract and to award damages. Sweeney v. American Nat'l Bank, 62 Idaho 544, 115 P.2d 109 (1941).

In contractor's action against building owner and bank for a declaratory judgment construing a tripartite agreement, under which the contractor agreed to look to the owner individually for payment of the cost of building in excess of a certain sum until a mortgage held by the bank was satisfied, where the court had jurisdiction of parties and subject-matter and the action was a proper one for declaratory judgment, the court, construing the contract and determining that there was something due from the owner to the contractor, erred in failing to go further and determine the amount due. Sweeney v. American Nat'l Bank, 62 Idaho 544, 115 P.2d 109 (1941).

Declaratory judgment proceeding was not the proper proceeding to determine the amount of damages that an insurance exchange owed to decedent's estate because this was a factual issue, and there was no complicated question to answer with respect to a policy's interpretation. Farmers Ins. Exch. v. Tucker, 142 Idaho 191, 125 P.3d 1067 (2005).

Declaratory Judgment on Cross-Complaint.

There is no sufficient issue of a controversy tendered under the Declaratory Judgment Act when the only question raised in the complaint is not the matter in controversy. State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938).

Failure to dismiss cross claim, in suit brought for the sole purpose of securing a declaration that an insurance policy has been obtained by fraudulent representations and concealment of facts, of the heirs of the people killed in an automobile collision with insured was error as insurance company was entitled to attack propriety of the cross claim without waiving its right or the right of the insured to a jury trial on the issues raised thereby. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

The cross claim filed by the heirs of the people killed in an automobile collision with insured in suit brought by the insurance company for the purpose of securing a declaration relative to its liability under the insurance policy was not a coercive pleading under this rule because it did not arise out of the transaction or occurrence which is the subject matter of the insurer's action for declaratory relief. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

Entire Controversy Adjudicated.

Where the court takes jurisdiction for one purpose, it will be retained for all purposes and the entire controversy fully settled. Sweeney v. American Nat'l Bank, 62 Idaho 544, 115 P.2d 109 (1941).

It is the policy of the law that all differences should be decided in one proceeding if possible, and this applies to declaratory judgment actions. Sweeney v. American Nat'l Bank, 62 Idaho 544, 115 P.2d 109 (1941).

Federal Action Dismissed.

Since many questions concerning petroleum spill into creek could not be decided until a full factual record was developed, action filed in federal court for declaratory judgment by insurer against insured alleging that insured was not covered by policies executed between them with respect to the petroleum spill, would be dismissed in light of underlying state action between the parties, where insurer had an adequate state remedy in action for declaratory relief as authorized by this section. American Economy Ins. Co. v. Williams, 805 F. Supp. 859 (D. Idaho 1992).

Indispensable Parties.

Injured third parties are proper but not necessary parties defendant in an action brought by an insurer for a declaratory judgment determining the validity of an insurance policy and its liability thereunder. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

Insanity Defense.

A statement of defense counsel asserting the impossibility of a psychiatrist offering an opinion of defendant's insanity without a legal standard to work with, did not suffice to create a justiciable issue as to whether the abolition of the insanity defense deprived the defendant's due process rights; therefore, the trial court properly refused to render a declaratory judgment on the issue. State v. Rhoades, 119 Idaho 594, 809 P.2d 455 (1991).

The supreme court upheld the trial court's finding that the record did not create a justiciable controversy to support a ruling on the issue of the repeal of the insanity defense where there was nothing before the court to indicate an insanity defense had been raised, as a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists. State v. Rhoades, 120 Idaho 795, 820 P.2d 665 (1991), cert. denied, 504 U.S. 987, 112 S. Ct. 2970, 119 L. Ed. 2d 589 (1992).

Where the record before the trial court contained nothing more than the statement of counsel that he desired to inquire into the viability of the insanity defense, and that although defendant had been examined by a psychiatrist, no opinion in any form as to defendant's mental state could be forthcoming unless the court provided an operative legal definition of insanity, counsel's unsworn statement and the testimony of a law enforcement officer did not provide a factual showing sufficient to create a justiciable issue before the court. State v. Rhoades, 121 Idaho 63, 822 P.2d 960 (1991), cert. denied, 506 U.S. 1047, 113 S. Ct. 962, 122 L. Ed. 2d 119 (1993).

Issuance by Supreme Court.

Even though legislative authorization is not necessary, this section authorizes the supreme court to issue declaratory judgments in appropriate situations. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Issues for Jury.

The Declaratory Judgments Act of 1933 granted a right and a remedy unknown at common law. Since rights and remedies created by the legislature subsequent to the adoption of the constitution are not within the protection of the constitutional provisions, the trial of issues of fact incidental to the exercise of rights and remedies created by this act are generally triable before the court without a jury. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

The trial of issues of fact incidental to the exercise of rights and remedies granted by the Declaratory Judgments Act are generally triable before the court without a jury. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

When issues of fact triable by jury under the common law or territorial statutes arise in declaratory proceedings, the procedure must be such as to preserve the right of trial by jury. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

Jurisdiction.

Where parties appear and suit may be construed as one to quiet title, or for declaratory relief to construe a contract to convey land, the district court has jurisdiction of both the parties and subject-matter. Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937).

District court has jurisdiction to entertain suit to construe unemployment compensation law, notwithstanding power conferred on industrial accident board to determine its jurisdiction and questions relative to enforcement. Idaho Mut. Benefit Ass'n v. Robison, 65 Idaho 793, 154 P.2d 156 (1944).

Justiciable Controversy.

The questioned "right" or "status" may invoke either remedial or preventive relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual and existing facts. State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935); Ayers v. General Hosp., 67 Idaho 430, 182 P.2d 958 (1947).

Where plaintiff makes certain allegations in his pleadings and the defendant admits them, the pleadings are insufficient to present a justiciable controversy. Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938).

When there is no disputed issue, no justiciable controversy is tendered, and action will be dismissed. Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938).

Unless there is a justiciable controversy, a declaratory action will not lie. State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938).

An action by publisher and others against code commission for declaratory judgment that statutory requirement requiring publishing company to have code printed on certain date was directory and not mandatory, presented a justiciable controversy within the purview of the declaratory judgment statute. Koon v. Bottolfsen, 66 Idaho 771, 169 P.2d 345 (1946).

Fact that code commission granted publisher an unauthorized extension of time for publication of code did not relieve publisher of duty to have code printed on date specified by statute. Koon v. Bottolfsen, 66 Idaho 771, 169 P.2d 345 (1946).

Where a grave question arose as to whether Canyon County, by entering into contracts for the construction of a new jail, thereby created an indebtedness in excess of revenues available for the year in which the contracts were made, it was proper to sue under the Declaratory Judgment Act in order to determine this and other questions. Iverson v. Canyon County, 69 Idaho 132, 204 P.2d 259 (1949).

Executrix properly raised question of whether the statute of limitations had barred the right of the state to exact payment of transfer taxes from her as executrix in the matter of decedent's estate under the declaratory judgment statute in action commenced more than five years after executrix had made application to the probate court for letters testamentary, she having made the state a party defendant by reason of its ostensible claim for transfer taxes, tax collector defending against executrix's claim of being

entitled to release from payment of transfer taxes as incident to estate of testator due to lapse of time. White v. Conference Claimants Endowment Comm'n, 81 Idaho 17, 336 P.2d 674 (1959).

Where the subject matter of an action involved alleged proposed unlawful action on the part of the director of insurance which allegedly would cause an insurer irreparable harm and resolution of the issues raised by the complaint required construction of applicable statutes and determination of the legal effect of a prior administrative decision and order and a prior order of a court of a sister state, the claims presented by the insurer in the district court action involved issues which could be appropriately determined in a declaratory judgment action. Sierra Life Ins. Co. v. Granata, 99 Idaho 624, 586 P.2d 1068 (1978).

As a general rule, a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists; a "controversy" in this sense must be one that is appropriate for judicial determination. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests; it must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. Harris v. Cassia County, 106 Idaho 513, 681 P.2d 988 (1984).

Where a declaratory judgment on the facts presented would have clarified whether the county commissioners have a legal obligation to provide county assistance to claimants under Idaho indigency statutes if, and when, the indigent fund is depleted, and would have removed any uncertainty over whether the county assistance could again be terminated, the district court's dismissal of the claimant's action for declaratory relief was improper. Harris v. Cassia County, 106 Idaho 513, 681 P.2d 988 (1984).

Courts will not rule on declaratory judgment actions which present questions that are moot or abstract. An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff: the plaintiff would be unable to obtain further relief based on the judgment, and no other relief is sought in the action Wylie v. State, 151 Idaho 26, 253 P.3d 700 (2011).

Property owner's declaratory complaint challenging a denial of access for a subdivision directly onto a state highway failed to present a justiciable issue under § 10-1202 and this section, because a prior development agreement describing the subdivision's access points unambiguously provided that there would be no direct access to the highway and the property owner acquired his interest from a voluntary party to that agreement. Wylie v. State, 151 Idaho 26, 253 P.3d 700 (2011).

Partnership.

In an action by surviving partners against the administratrix of deceased partner for a declaratory judgment and accounting, surviving partners were entitled to a declaratory judgment, where the complaint stated situation confronting the surviving partners and involving the partnership affairs, and the doubt, uncertainty, and controversy existing between them and the administratrix. Varkas v. Varkas, 64 Idaho 297, 130 P.2d 867 (1942).

Pleading and Practice.

Plaintiffs were not prejudiced by the erroneous sustaining of demurrer to their complaint, where the defendant's cross-complaint and answer thereto presented all issues that could have been presented by the original complaint, and the case was tried on those issues and finally submitted to the court, and the court decided the same. Varkas v. Varkas, 64 Idaho 297, 130 P.2d 867 (1942).

In a cause of action for declaratory judgment, a mere averment of a disagreement without pleading the facts disclosing the grounds for, and at least the basis of plaintiff's claims in connection with the disagreement is insufficient. Ayers v. General Hosp., 67 Idaho 430, 182 P.2d 958 (1947).

Prematurity.

Provision of ordinance that village would require "tenant or occupant" to connect with sewer was merely a promise of future action on the part of the village for benefit of bondholders; hence it would not be passed on by the court in a declaratory judgment action on the ground of prematurity. Schmidt v. Village of Kimberly, 74 Idaho 48, 256 P.2d 515 (1953).

Public Importance.

An association which issued a policy of insurance insuring against loss resulting from the operation of an automobile covered thereby, and which did so as attorney in fact for an inter-insurance exchange was the "real party in interest" and entitled to bring, under the federal declaratory judgment act (28 USCS § 2201, 2202), an action for a decree to the effect that it was not liable under the policy, since the action was in reality in equity. Farmers Underwriters Ass'n v. Wanner, 30 F. Supp. 358 (D. Idaho 1938).

Supreme court does not have power to supplement legislative action by injecting into Declaratory Judgment Act a provision providing that "public importance" of a question as to constitutionality of a statute is sufficient to confer legal capacity. Thomas v. Riggs, 67 Idaho 223, 175 P.2d 404 (1946).

Real Party in Interest.

In an action, under the federal declaratory judgment act (28 USCS §§ 2201, 2202), by an association which had issued a policy of insurance against loss from the operation of an automobile as attorney in fact for an inter-insurance exchange, as authorized by law, the exchange was "a proper party in interest," but was not "an indispensable party." Farmers Underwriters Ass'n v. Wanner, 30 F. Supp. 358 (D. Idaho 1938).

Ripeness.

Neighboring landowner's action for a declaration that a public road easement existed over a portion of an adjacent subdivision as shown on the plat of the subdivision was ripe because delaying the adjudication would have added nothing material to the litigation and a court would be in no better position to decide the existence of the easement and a declaration regarding the existence of an easement would afford the parties relief from uncertainty and controversy in the future. Schneider v. Howe, 142 Idaho 767, 133 P.3d 1232 (2006).

In declaratory judgment action, district court erred by ruling that city was permitted to refuse to approve voters' petition for a city initiative legalizing marijuana on the basis that it conflicted with the general laws of the state and, thus, exceeded the scope of a city initiative: the issue as to whether the initiative concerned matters outside the scope of such was not ripe for adjudication since it was a pre-election challenge. Davidson v. Wright, 143 Idaho 616, 151 P.3d 812 (2006).

Scope of Power.

While this section allows courts to declare legal relations, that power is inherently limited to the interpretation of previously established substantive law. Where the legislature has not seen fit to provide substantive legal grounds on which a court can base a requested declaration, then it is outside of the authority of that court to make said declaration, even when it would further the interests of all parties involved. Doe v. Doe (In re Declaration of Parentage & Termination of Parental Rights), 160 Idaho 360, 372 P.3d 1106 (2016).

Standing.

Corporate landowner had no standing to challenge the validity of an agreement between city and county establishing a city impact area where landowner neither alleged nor offered proof that inclusion of its property within the city impact area would inconvenience it, place new limitations upon its use or enjoyment of the land or cause economic injury. Student Loan Fund of Idaho, Inc. v. Payette County, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994).

Court did not err in denying homeowners' motion for summary judgment and in granting declaratory judgment for a neighboring landowner in his action for a declaration that a public road easement existed over a portion of an adjacent subdivision as shown on the plat of the subdivision and the landowner had standing because he had demonstrated a future injury; he was seeking to subdivide his property and the easement offered the only possible access route for ingress and egress for a potential subdivision. Schneider v. Howe, 142 Idaho 767, 133 P.3d 1232 (2006).

Objecting landowners had standing under § 10-1202 and this section to challenge a rezoning decision that allowed expansion of mining operations to adjacent property, because the objectors alleged specific harms resulting from the rezoning, rather than from the existing mining activities. Ciszek v. Kootenai County Bd. of Comm'rs, 151 Idaho 123, 254 P.3d 24 (2011).

Taxation.

Declaratory judgment action lies to determine the right of a state officer to collect tax from a distillery of another state where such distillery stores

liquor in this state for sale to the state of Idaho. Century Distilling Co. v. Defenbach, 61 Idaho 192, 99 P.2d 56 (1940).

Where a taxpayer had paid the state income tax for 1939 without protest, he was not entitled to recover such payment, notwithstanding that he had paid the tax or given security for its payment before the institution of a suit for its recovery. Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

Where a taxpayer, seeking to recover state income taxes, has complied with the statute relating to review of the action of the commissioner, and the fact that a suit had been brought under the Declaratory Judgment Statute rather than a suit to review the action of the commissioner had not imposed an additional burden upon the commissioner, relief would not be denied on the ground that the taxpayer's suit should have been one to review the action of the commissioner in refusing a refund. Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

A taxpayer, having no special interest peculiar to himself that is not common to all other taxpayers, could not maintain action to declare annexation ordinance void. Greer v. Lewiston Golf & Country Club, 81 Idaho 393, 342 P.2d 719 (1959).

A justiciable controversy existed for purposes of the Declaratory Judgment Act where elected officials challenged whether a taxpayer coalition's referendum and initiative were the proper means to reject an ad valorem tax levy and establish a budget process for a county. Weldon v. Bonner County Tax Coalition, 124 Idaho 31, 855 P.2d 868 (1993), overruled on other grounds, City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display), 143 Idaho 254, 141 P.3d 1123 (2006).

When Granted.

Generally, in determining whether to grant a declaratory judgment, the criteria is whether it will clarify and settle the legal relations in issue, and whether such a declaration will afford relief from the uncertainty and controversy giving rise to the proceeding. Sweeney v. American Nat'l Bank, 62 Idaho 544, 115 P.2d 109 (1941).

A declaratory judgment must clarify and settle the legal relations in issue and afford relief from the uncertainty and controversy which gave rise to

the action. Harris v. Cassia County, 106 Idaho 513, 681 P.2d 988 (1984).

When Proper Remedy.

Declaratory judgment is not a proper remedy where main issue is determination of issue of fact. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435 (1951).

Issue of whether warehouse was guilty of negligence in failing to move wheat from danger of flood could not be determined by declaratory judgment suit. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435 (1951).

Declaratory judgment remedy can be used to determine and declare fixed legal rights, but it cannot be used to determine issues or questions which are uncertain or hypothetical. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435 (1951).

Where the insurer acts with reasonable promptness in filing a cross claim so that the injured insured and injured third parties are not prejudiced, the insurer is entitled to have the question of the validity of its policy and its liability thereunder determined prior to the trial of an action against the insurer upon a liability alleged to be covered by the policy so that the insurer may know whether it is obligated to defend the insurer as provided by the policy. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

Relief by way of a declaratory judgment is not available in a case where negligence of the defendant is the determinative issue due to the right of the parties to a jury trial in a negligence case. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

Declaratory judgment action was an appropriate mechanism to validate a United States Revised Statute 2477 right-of-way, where the county failed to act on the owners' validation petition, and, since the road provided access to the property they were trying to sell, the owners had standing to request a declaratory judgment. Nemeth v. Shoshone Cty., — Idaho —, 453 P.3d 844 (2019).

Writs of Prohibition.

The extraordinary writs of prohibition and mandamus are not available where an adequate remedy exists in the ordinary course of law, either legal

or equitable; where lowest bid public works contractor had the remedies of the Uniform Declaratory Judgment Act available, the writ of prohibition was vacated. Agricultural Servs., Inc. v. City of Gooding, 120 Idaho 627, 818 P.2d 331 (Ct. App. 1991).

Zoning.

District court had authority to consider petitions for declaratory judgment in an action challenging the validity of a zoning ordinance because landowner was not seeking review of any administrative decision, but, rather, was seeking a determination of how his land was zoned. McCuskey v. Canyon County, 123 Idaho 657, 851 P.2d 953 (1993).

Cited Russell v. Boise City, 70 Idaho 199, 214 P.2d 472 (1950); Boughton v. Price, 70 Idaho 243, 215 P.2d 286 (1950); Nampa Lodge No. 1389 Benevolent & Protective Order of Elks v. Smylie, 71 Idaho 212, 229 P.2d 991 (1951); Taggart v. Latah County, 78 Idaho 99, 298 P.2d 979 (1956); Pacific N.W. Bell Tel. Co. v. Rivers, 88 Idaho 240, 398 P.2d 63 (1964); Engen v. James, 92 Idaho 690, 448 P.2d 977 (1969); Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978); Nelson v. Whitesides, 103 Idaho 374, 647 P.2d 1246 (1982); Evans v. Andrus, 124 Idaho 6, 855 P.2d 467 (1993); Selkirk-Priest Basin Ass'n v. State ex rel. Batt, 128 Idaho 831, 919 P.2d 1032 (1996); Dunham v. Hackney Airpark, Inc., 133 Idaho 613, 990 P.2d 1224 (Ct. App. 1999); Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012); Haight v. Idaho DOT, 163 Idaho 383, 414 P.3d 205 (2018); Nye v. Katsilometes, 165 Idaho 455, 447 P.3d 903 (2019).

OPINIONS OF ATTORNEY GENERAL

Should legislation be adopted permitting a public subdivision to voluntary withdrawal from PERSI (Public Employees Retirement System of Idaho), PERSI, while not having a fiduciary duty to challenge the legislation, would be charged with the responsibility of allowing political subdivisions to withdraw from the system and would, thus, have standing to bring a declaratory judgment action or to bring an original action in the supreme court seeking a judicial declaration of the validity of the statute before allowing any withdrawals; thus, by obtaining such a declaration prior to actually allowing employers to withdraw, PERSI could avoid the

logistical problems that could be created if the statute were declared invalid after a number of employers had already withdrawn and employees brought an action seeking damages for PERSI's breach of its fiduciary duty regarding employee's benefits. OAG 96-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, § 1 et seq.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 1 et seq.

ALR. — Validity, construction, and application of criminal statutes or ordinances as proper subject for declaratory judgment. 10 A.L.R.3d 727.

Availability and scope of declaratory judgment actions in determining rights of parties, or power and exercise thereof by arbitrators, under arbitration agreements. 12 A.L.R.3d 854.

Insured's right to recover attorneys' fees incurred in declaratory judgment action to determine existence of coverage under liability policy. 87 A.L.R.3d 429.

Right to jury trial in action for declaratory relief in state court. 33 A.L.R.4th 146.

Relief other than by dissolution in cases of intracorporate deadlock or dissension. 34 A.L.R.4th 13.

§ 10-1202. Person interested or affected may have declaration. — Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

History.

1933, ch. 70, § 2, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

CASE NOTES

Exhaustion of remedies.

In general.

Insurers.

Interested party.

Justiciable controversy.

— Declaratory judgment.

Prosecuting attorney suing.

Plat.

Retailer.

Validity of ordinance.

Zoning.

Exhaustion of Remedies.

In a breach of contract action relating to cottage site leases from the state, a trial court erred by finding that several lessees were unable to bring a declaratory judgment action due to a failure to exhaust administrative remedies. The case presented was one of contract interpretation, rather than a challenge to administrative action. Wasden v. State Bd. of Land Comm'n, 153 Idaho 190, 280 P.3d 693 (2012).

In General.

The circumstances under which a declaratory judgment can be properly granted are limited by this section. Nelson v. Whitesides, 103 Idaho 374, 647 P.2d 1246 (1982).

Insurers.

Where the subject matter of an action involved alleged proposed unlawful action on the part of the director of insurance which allegedly would cause an insurer irreparable harm, and resolution of the issues raised by the complaint required construction of applicable statutes and determination of the legal effect of a prior administrative decision and order and a prior order of a court of a sister state, the claims presented by the insurer in the district court action involved issues which could be appropriately determined in a declaratory judgment action. Sierra Life Ins. Co. v. Granata, 99 Idaho 624, 586 P.2d 1068 (1978).

Interested Party.

In action seeking declaration on the constitutionality of §§ 1-2311 to 1-2313 and Idaho R. Civ. P. 81*(l)*, since plaintiff was an interested party under this section and since the district court clerk was a proper party defendant and there need be but one proper party, the case presented a justiciable controversy on the constitutionality of said statutes and rule. Frizzell v. Swafford, 104 Idaho 823, 663 P.2d 1125 (1983).

A developer lacked standing to bring an action for declaratory judgment where the developer failed to demonstrate that it suffered from a distinct palpable injury. Martin & Martin Custom Homes, LLC v. Camas County, 150 Idaho 508, 248 P.3d 1243 (2011).

Objecting landowners had standing under § 10-1201 and this section to challenge a rezoning decision that allowed expansion of mining operations to adjacent property, because the objectors alleged specific harms resulting from the rezoning, rather than from the existing mining activities. Ciszek v. Kootenai County Bd. of Comm'rs, 151 Idaho 123, 254 P.3d 24 (2011).

Justiciable Controversy.

Property owner's declaratory complaint challenging a denial of access for a subdivision directly onto a state highway failed to present a justiciable issue under § 10-1201 and this section, because a prior development agreement describing the subdivision's access points unambiguously provided that there would be no direct access to the highway and the property owner acquired his interest from a voluntary party to that agreement. Wylie v. State, 151 Idaho 26, 253 P.3d 700 (2011).

Property owner was not entitled to declaratory relief to define the process an irrigation district had to use when considering petitions for exclusion because the property owner failed to demonstrate the existence of an actual or justiciable controversy. Bettwieser v. New York Irrigation Dist., 154 Idaho 317, 297 P.3d 1134 (2013).

A declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists. The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. City of Hailey v. Old Cutters, Inc. (In re Old Cutters, Inc), 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

Bankruptcy court was not precluded by this section from reviewing an annexation fee and community housing obligations that a city required from a debtor/developer as a condition to annexation, where the question before the court was whether the city had the statutory authority to impose the fee and housing provisions as conditions precedent. City of Hailey v. Old Cutters, Inc. (In re Old Cutters, Inc), 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

Dismissing a petition for a declaratory judgment as to whether a Washington state conviction was substantially equivalent to an Idaho sex offense was error. where the petitioner alleged that he planned to work more frequently in Idaho, he was presently not working in Idaho as much as his

job demands dictated, and the requested relief was likely to prevent injury. Doe v. State, 158 Idaho 778, 352 P.3d 500 (2015).

While the Idaho supreme court has previously stated that this section applies only in a case where an actual or justiciable controversy exists, precluding courts from deciding cases which are purely hypothetical or advisory, the justiciability requirement is a self-imposed constraint that may be relaxed in rare cases to guarantee important constitutional provisions. Westover v. Idaho Counties Risk Mgmt. Program, 164 Idaho 385, 430 P.3d 1284 (2018).

— Declaratory Judgment.

Declaratory judgment was an appropriate cause of action where the agency responsible for the sex offender registry did not have a process for providing advisory rulings. Doe v. State, 158 Idaho 778, 352 P.3d 500 (2015).

Prosecuting Attorney Suing.

Action by prosecuting attorney for himself and for his successor in office for a declaratory judgment as to validity of a village ordinance was an action in his official capacity and on behalf of the people of the county and not in his individual capacity. Potvin v. Chubbuck, 76 Idaho 453, 284 P.2d 414 (1955).

Where a village located in one county passes an ordinance annexing territory in another county, the prosecuting attorney of the county in which the land sought to be annexed was located, who filed an action for a declaratory judgment to determine validity of ordinance, was entitled to maintain same as a quo warranto proceeding, though quo warranto was not the exclusive remedy for testing validity of annexation. Potvin v. Chubbuck, 76 Idaho 453, 284 P.2d 414 (1955).

Plat.

In an action for declaratory judgment to determine whether a road was public or private, the district court correctly declared that the road was public, because the plat unambiguously dedicated the disputed road to the public. Kepler-Fleenor v. Fremont County, 152 Idaho 207, 268 P.3d 1159 (2012).

Retailer.

A retailer, who was prohibited from continuing to sell beer in kegs as a result of the passage of a county ordinance, was a proper party to bring a declaratory judgment action challenging the validity of a section of the ordinance that prohibited the sale of beer in kegs within the county. Hobbs v. Abrams, 104 Idaho 205, 657 P.2d 1073 (1983).

Validity of Ordinance.

An applicant for a beer license was not precluded, by the existence of appellate procedure in the licensing laws, from seeking a declaratory judgment to determine the validity of the village ordinance under which his application was denied. Winther v. Village of Weippe, 91 Idaho 798, 430 P.2d 689 (1967).

Zoning.

Property owner acted reasonably on appeal in a zoning case, conceding arguments where a decision unfavorable to him was res judicata and by not making frivolous arguments. Thus, although the owner lacked standing under this section because the zoning of his land had not been changed, the county was not entitled to attorney fees on appeal. Martin v. Smith, 154 Idaho 161, 296 P.3d 367 (2013).

Cited Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); Century Distilling Co. v. Defenbach, 61 Idaho 192, 99 P.2d 56 (1940); Idaho Mut. Benefit Ass'n v. Robison, 65 Idaho 793, 154 P.2d 156 (1944); Tomchak v. Walker, 108 Idaho 446, 700 P.2d 68 (1985); Chavez v. Canyon County, 152 Idaho 297, 271 P.3d 695 (2012); Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012); Haight v. Idaho DOT, 163 Idaho 383, 414 P.3d 205 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, § 71 et seq.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 124 et seq.

§ 10-1203. Construction of contracts. — A contract may be construed either before or after there has been a breach thereof.

History.

1933, ch. 70, § 3, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

CASE NOTES

Automobile insurance policies.

Taxation.

Automobile Insurance Policies.

Any party involved in an automobile accident, whether it is the injured party, the insured, or the insurance carrier, may apply to the court for the determination of the rights and liabilities of the parties in advance of any suit being filed by the injured party against the insured. Farm Bureau Mut. Auto. Ins. Co. v. Daniel, 92 F.2d 838 (4th Cir. 1937).

Taxation.

Where a taxpayer, seeking to recover state income taxes, had complied with the statutes relating to review of the action of the commissioner, and the fact that suit had been brought under the declaratory judgment statute, rather than a suit to review the action of the commissioner, had not imposed an additional burden upon the commissioner, the relief would not be denied on the ground that the taxpayer had sought the wrong remedy. Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

Cited State ex rel. Gundlach v. Featherstone, 54 Idaho 640, 34 P.2d 62 (1934); Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n, 112 Idaho 10, 730 P.2d 930 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, §§ 117 — 121.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 57 et seq.

§ 10-1204. Representatives and persons beneficially interested — Right to declaration. — Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, a person with a mental disability or insolvent, may have a declaration of rights or legal relations in respect thereto;

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other; or (b) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or (c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

History.

1933, ch. 70, § 4, p. 113; am. 2010, ch. 235, § 4, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted "a person with a mental disability" for "lunatic" in the introductory paragraph.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

CASE NOTES

Jurisdiction.

Where, by the pleadings of the parties and the pre-trial order of the court, construction of the will was sought by all parties, the district court had before it the necessary parties and the will itself, as it is a court of general

jurisdiction, under the circumstances, it properly could consider the question as one involving a petition for declaratory judgment, although the probate court did not attempt any construction of the will. Sawyer v. Huff, 86 Idaho 328, 386 P.2d 563 (1963).

Decisions Under Prior Law Validity of Trust.

The validity or certainty of a trust may be determined in a declaratory action. Chicago Bank of Commerce v. McPherson, 62 F.2d 393 (6th Cir.), cert. denied, 289 U.S. 736, 53 S. Ct. 596, 77 L. Ed. 1484 (1932).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, §§ 147, 210.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 104 et seq.

§ 10-1205. Enumeration not a limitation. — The enumeration in Sections 10-1202, 10-1203 and 10-1204[, Idaho Code], does not limit or restrict the exercise of the general powers conferred in Section 10-1201[, Idaho Code], in any proceedings where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

History.

1933, ch. 70, § 5, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The bracketed insertions were added by the compiler to conform to the statutory citation style.

CASE NOTES

Cited Sierra Life Ins. Co. v. Granata, 99 Idaho 624, 586 P.2d 1068 (1978).

§ 10-1206. When court may refuse judgment or decree. — The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

History.

1933, ch. 70, § 6, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

CASE NOTES

Cited State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935); State ex rel. Diefendorf v. Idaho Egg Producers, 59 Idaho 38, 80 P.2d 28 (1938); Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, § 23.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 26.

§ 10-1207. Review of orders, judgments and decrees. — All orders, judgments and decrees under this Act may be appealed from or reviewed as other orders, judgments and decrees.

History.

1933, ch. 70, § 7, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

CASE NOTES

Appealable Order.

In personal injury action brought by passenger against minor driver in which minor's father was named as codefendant on the basis of former § 49-313 [now § 49-310], where plaintiff moved for partial summary judgment against the father who countered with a pleading denominated a "petition for declaratory judgment" by which he sought determination of the extent of his liability under former § 49-313 [now § 49-310], trial court's order purporting to determine the extent of such liability could not be considered a declaratory order or judgment under this section, nor was it in the nature of a final judgment or decree subject to review under Idaho App. R. 11(a)(1); rather, it remained subject to review and revision in the trial court so long as the jurisdiction of that court continued. Nelson v. Whitesides, 103 Idaho 374, 647 P.2d 1246 (1982).

RESEARCH REFERENCES

C.J.S. — 26 C.J.S., Declaratory Judgments, § 160 et seq.

§ 10-1208. Further relief on petition — Showing by adverse party. — Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

History.

1933, ch. 70, § 8, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, §§ 99, 100.

C.J.S. — 26 C.J.S., Declaratory Judgments, §§ 152, 153.

§ 10-1209. Issues of fact — Trial and determination. — When a proceeding under this act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other actions at law or suits in equity in the court in which the proceeding is pending.

History.

1933, ch. 70, § 9, p. 113.

STATUTORY NOTES

Cross References.

Trial of issues of fact, Idaho Civil Procedure Rules 38(a) to 38(d) and 39(a) to 39(c).

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

CASE NOTES

Declaratory judgment on cross-complaint.

Issues for jury.

When proper remedy.

Declaratory Judgment on Cross-Complaint.

Failure to dismiss cross claim, in suit brought for the sole purpose of securing a declaration that an insurance policy had been obtained by fraudulent representations and concealment of facts, of the heirs of the people killed in an automobile collision with insured was error as insurance

company was entitled to attack propriety of the cross-claim without waiving its right or the right of the insured to a jury trial on the issues raised thereby. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

Issues for Jury.

Issue of negligence of warehouse in failing to move wheat from warehouse due to danger from flood was for the jury. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435 (1951).

In the Declaratory Judgments Act itself, the legislature has undertaken to extend the right of jury trial to issues of fact arising in such cases only on a permissive basis. Temperance Ins. Exch. v. Carver, 83 Idaho 487, 365 P.2d 824 (1961).

When Proper Remedy.

Declaratory judgment is not a proper remedy where main issue is determination of issue of fact. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435 (1951).

Declaratory judgment proceeding was not the proper proceeding to determine the amount of damages that an insurance exchange owed to decedent's estate because this was a factual issue, and there was no complicated question to answer with respect to a policy's interpretation. Farmers Ins. Exch. v. Tucker, 142 Idaho 191, 125 P.3d 1067 (2005).

Cited Sweeney v. American Nat'l Bank, 62 Idaho 544, 115 P.2d 109 (1941); Tomchak v. Walker, 108 Idaho 446, 700 P.2d 68 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, §§ 236, 237.

C.J.S. — 26 C.J.S., Declaratory Judgments, §§ 152, 153.

§ 10-1210. Costs. — In any proceeding under this act the court may make such award of costs as may seem equitable and just.

History.

1933, ch. 70, § 10, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

CASE NOTES

Costs denied.

Novel arguments.

Costs Denied.

Where appellant insured's claims for breach of an insurance contract and declaratory relief were dismissed, the insured was not the prevailing party and, thus, was not entitled to recover attorney fees under Idaho App. R. 40 or costs under this section. Villa Highlands, LLC v. Western Cmty. Ins. Co., 148 Idaho 598, 226 P.3d 540 (2010).

Novel Arguments.

Where a party chooses to pursue novel arguments and approaches to try to advance its interests and to relieve itself of its contractual obligations, equity and justice require that that party should bear the attributable court costs. Univ. of Idaho Found., Inc. v. Civic Partners, Inc. (In re Univ. Place/Idaho Water Ctr. Project), 146 Idaho 527, 199 P.3d 102 (2008).

Cited Freiburger v. J-U-B Eng'rs, Inc., 141 Idaho 415, 111 P.3d 100 (2005); Nat'l Union Fire Ins. Co. v. Dixon, 141 Idaho 537, 112 P.3d 825 (2005); Schneider v. Howe, 142 Idaho 767, 133 P.3d 1232 (2006); Idaho Dairymen's Ass'n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 1 et seq.

C.J.S. — 20 C.J.S., Costs, § 1 et seq.

§ 10-1211. Parties to action — Municipal order or franchise. — When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served, and be entitled to be heard and may intervene.

History.

1933, ch. 70, § 11, p. 113; am. 1983, ch. 129, § 1, p. 325; am. 1998, ch. 235, § 1, p. 792.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

CASE NOTES

Corporations.

Necessary parties.

Corporations.

Determination, in proceeding between trustee under will of sole owner of corporation and employees of corporation as beneficiaries under will, that notes of corporation in favor of manager were an expense of corporation was not a bar to counterclaim by corporation for breach of trust in suit on notes by manager against corporation, since actions were not between the same parties, and issue raised by counterclaim was not before the court in

the first action. Melgard v. Moscow Idaho Seed Co., 73 Idaho 265, 251 P.2d 546 (1952).

Necessary Parties.

In an action against the department of administration for an alleged violation of the state procurement process, the parties awarded the questioned contracts are necessary parties to the action. Syringa Networks, LLC v. Idaho Dep't of Admin., 159 Idaho 813, 367 P.3d 208 (2016).

Cited Whitney v. Randall, 58 Idaho 49, 70 P.2d 384 (1937); Tomchak v. Walker, 108 Idaho 446, 700 P.2d 68 (1985).

RESEARCH REFERENCES

C.J.S. — 26 C.J.S., Declaratory Judgments, § 127 et seq.

§ 10-1212. Construction of act. — This act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.

History.

1933, ch. 70, § 12, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

CASE NOTES

Determinable Issues.

Issue of whether warehouse was guilty of negligence in failing to move wheat from danger of flood could not be determined by declaratory judgment suit. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435 (1951).

Cited State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935); Idaho Mut. Benefit Ass'n v. Robison, 65 Idaho 793, 154 P.2d 156 (1944).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, §§ 7, 8.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 10.

§ 10-1213. "Person" defined. — The word "person" wherever used in this act, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

History.

1933, ch. 70, § 13, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

§ 10-1214. Separability — Exception. — The several sections and provisions of this act, except Sections 10-1201 and 10-1202, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the act invalid or inoperative.

History.

1933, ch. 70, § 14, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

§ 10-1215. Construction to effectuate uniformity. — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of these [those] states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

History.

1933, ch. 70, § 15, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The bracketed word "those" was inserted by the compiler.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

§ 10-1216. Short title. — This act may be cited as the Uniform Declaratory Judgment Act.

History.

1933, ch. 70, § 16, p. 113.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Compiler's Notes, § 10-1201.

The words "this act" refer to S.L. 1933, ch. 70, which is codified as §§ 10-1201 to 10-1216.

§ 10-1217. Declaratory judgment of legal death. — The court has the authority through a declaratory judgment to determine that a person who is absent, and who has not been heard from, is legally dead. In making such determination, the court may, at any time, consider all evidence available, and may rule, based on clear and convincing evidence before it, that the person is dead, or that there is insufficient evidence to so rule.

History.

I.C., § 10-1217, as added by 1974, ch. 32, § 1, p. 985.

CASE NOTES

Cited Thomas v. John Hancock Mut. Life Ins. Co., 113 Idaho 98, 741 P.2d 734 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 22 Am. Jur. 2d, Declaratory Judgments, §§ 80, 84-85.

Idaho Code Ch. 13

Chapter 13
FOREIGN JUDGMENTS

Sec.

10-1301. "Foreign judgment" defined.

10-1302. Filing of foreign judgment with clerk of district court — Effect of filing.

10-1303. Affidavit containing name and address of judgment debtor and creditor — Notice of filing — When process for enforcement may issue.

10-1304. Stay of execution.

10-1305. Fees.

10-1306. Alternative remedies unimpaired.

10-1306A. Recording of filed judgment.

10-1307. Uniform construction of act.

10-1308. Citation of act.

10-1309. Foreign orders — Reciprocal agreements — Public policy.

§ 10-1301. "Foreign judgment" defined. — In this act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court or an order of an administrative body of any state regarding the support of a child, spouse, or former spouse or the establishment of paternity which is entitled to full faith and credit in this state.

History.

I.C., § 10-1301, as added by 1974, ch. 64, § 1, p. 1142; am. 1994, ch. 237, § 4, p. 746.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1974, ch. 64, which is codified as §§ 10-1301 to 10-1306, 10-1307, 10-1308.

CASE NOTES

Election of remedies.

Time limitations.

Election of Remedies.

There is no basis for preventing a foreign judgment creditor from pursuing parallel methods of satisfying his or her entire judgment. A judgment filed under the Idaho Enforcement of Foreign Judgments Act (EFJA) creates a lien on only real property, but, if a judgment debtor has insufficient real property to pay the entire judgment, it may be necessary to reach the debtor's other property; accordingly, a judgment creditor is not forced to elect between filing a foreign judgment under the EFJA and pursuing an action based on the foreign judgment. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

Time Limitations.

Six-year statute of limitations in § 5-215 does not affect the time in which a foreign judgment may be filed pursuant to the Idaho Enforcement of Foreign Judgments Act (EFJA). Section 5-215 applies only to an action upon a judgment requiring a judgment creditor to file a completely new case, but an EFJA filing does not involve initiating a new case; rather, under the EFJA, the foreign judgment is treated in the same manner as an Idaho judgment. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

Cited Kressly v. Kressly, 99 Idaho 348, 581 P.2d 806 (1978); Schwilling v. Horne, 105 Idaho 294, 669 P.2d 183 (1983); Andre v. Morrow, 106 Idaho 455, 680 P.2d 1355 (1984); Crosby v. Rowand Mach. Co., 111 Idaho 939, 729 P.2d 414 (Ct. App. 1986); In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991); G & R Petro., Inc. v. Clements, 127 Idaho 119, 898 P.2d 50 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 770 et seq.

C.J.S. — 50 C.J.S., Judgments, § 1273 et seq.

ALR. — Judgment subject to appeal as entitled to full faith in credit. 2 A.L.R.3d 1384.

Res judicata or collateral estoppel effect, in state where real property is located, of foreign decree dealing with such property. 32 A.L.R.3d 1330.

Requirement of full faith and credit to foreign judgment for punitive damages. 44 A.L.R.3d 960.

Validity, construction, and application of Uniform Enforcement of Foreign Judgments Act. 31 A.L.R.4th 706.

§ 10-1302. Filing of foreign judgment with clerk of district court — Effect of filing. — A copy of any foreign judgment certified in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any district court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner, with the following exceptions:

(1) The terms of a judgment providing for the custody of a minor child may not be modified, vacated, reopened nor stayed unless the court has assumed jurisdiction of the case under the uniform child custody jurisdiction [and enforcement] act, chapter 11, title 32, Idaho Code.

(2) The terms of a judgment providing for the support of a minor child may not be modified, vacated, reopened nor stayed unless the court has personal jurisdiction over all the parties; and the registration of a judgment providing for the support of a minor child for the purposes of enforcing that judgment shall not constitute submitting to the personal jurisdiction of the court.

History.

I.C., § 10-1302, as added by 1974, ch. 64, § 1, p. 1142; am. 1986, ch. 222, § 2, p. 593; am. 1994, ch. 237, § 5, p. 746.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (1) was added by the compiler to correct the title of the named act.

CASE NOTES

Motion to strike.

Perfecting a foreign judgment.

Reversal of foreign judgment.

Time limitations.

Writ of execution.

Motion to Strike.

The Idaho district court's denial of defendant's motion to strike a foreign judgment, which denial was based upon the district court's determination as a matter of law, that the Alaska court had personal jurisdiction over the defendant, was in error, where the evidence raised a substantial factual question as to whether the defendant had had sufficient minimum contacts with Alaska so as to support the assertion of in personam jurisdiction by the Alaska court. Schwilling v. Horne, 105 Idaho 294, 669 P.2d 183 (1983).

Perfecting a Foreign Judgment.

A foreign judgment may be perfected in Idaho by the filing of a duly authenticated copy of the judgment in the office of the clerk of a court, pursuant to § 10-1303, together with an affidavit containing the name and address of the judgment debtor and of the judgment creditor, and notice of that filing shall be mailed to the judgment debtor where, upon recording, that judgment becomes a lien upon real property. Westmark Fed. Credit Union v. Smith, 116 Idaho 474, 776 P.2d 1193 (1989).

Reversal of Foreign Judgment.

Where the Alaska supreme court reversed the order of the superior court of Alaska and set aside an Alaska judgment creditor's Alaska money judgment, it was improper for an Idaho district county court to deny the Alaska judgment debtor's Idaho R. Civ. P. 60(b) motion to set aside a judgment filed by the Alaska judgment creditor pursuant to this section. P & R Enters., Inc. v. Guard, 102 Idaho 671, 637 P.2d 1167 (1981).

Time Limitations.

Six-year statute of limitations in. § 5-215 does not affect the time in which a foreign judgment may be filed pursuant to the Idaho Enforcement of Foreign Judgments Act (EFJA). Under the EFJA, the foreign judgment is merely treated in the same manner as an Idaho judgment by the clerk of the court in which the judgment is filed, and may be enforced or satisfied in like

manner as an Idaho judgment, under § 10-1302. Grazer v. Jones, 154 Idaho 58, 294 P.3d 184 (2013).

Writ of Execution.

Where a magistrate court, having before it a copy of a foreign judgment which had been filed in that court and recorded in the recorder's office, issued a writ of execution with regard to said judgment, and where said magistrate court also had a copy of the requisite affidavit, a copy of the notice to the judgment creditors, and a copy of the clerk's certificate indicating that the judgment had been recorded, and where the judgment debtors were not a party to a subsequent action concerning the issuance of said writ, with regard to that subsequent action, an irregularity in the writ or its issuance was not sufficient to render it void. Westmark Fed. Credit Union v. Smith, 116 Idaho 474, 776 P.2d 1193 (1989).

Cited Kressly v. Kressly, 99 Idaho 348, 581 P.2d 806 (1978); G & R Petro., Inc. v. Clements, 127 Idaho 119, 898 P.2d 50 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 770 et seq.

C.J.S. — 50 C.J.S, Judgments, § 1273 et seq.

§ 10-1303. Affidavit containing name and address of judgment debtor and creditor — Notice of filing — When process for enforcement may issue. — (a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post-office address of the judgment debtor, and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer if any in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until five (5) days after the date the judgment is filed.

History.

I.C., § 10-1303, as added by 1974, ch. 64, § 1, p. 1142.

STATUTORY NOTES

Compiler's Notes.

As enacted, this section contained a heading which read, "Affidavit setting forth name and address of judgment debtor and creditor — Notice of filing — Execution, etc., not to issue until five days from filing of judgment."

CASE NOTES

Irregularity in writ of execution.

Lien on real property.

Irregularity in Writ of Execution.

Where a magistrate court, having before it a copy of a foreign judgment which had been filed in that court and recorded in the recorder's office, issued a writ of execution with regard to said judgment, and where said magistrate court also had a copy of the requisite affidavit, a copy of the notice to the judgment creditors, and a copy of the clerk's certificate indicating that the judgment had been recorded, and where the judgment debtors were not a party to a subsequent action concerning the issuance of said writ, with regard to that subsequent action, an irregularity in the writ or its issuance was not sufficient to render it void. Westmark Fed. Credit Union v. Smith, 116 Idaho 474, 776 P.2d 1193 (1989).

Lien on Real Property.

A foreign judgment may be perfected in Idaho by the filing of a duly authenticated copy of the judgment in the office of the clerk of a court, pursuant to this section, together with an affidavit containing the name and address of the judgment debtor and of the judgment creditor, and notice of that filing shall be mailed to the judgment debtor where, upon recording, that judgment becomes a lien upon real property. Westmark Fed. Credit Union v. Smith, 116 Idaho 474, 776 P.2d 1193 (1989).

Cited Kressly v. Kressly, 99 Idaho 348, 581 P.2d 806 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 770 et seq.

C.J.S. — 50 C.J.S., Judgments, § 1273 et seq.

§ 10-1304. Stay of execution. — (a) If the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the law of the state in which it was rendered.

(b) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

History.

I.C., § 10-1304, as added by 1974, ch. 64, § 1, p. 1142.

STATUTORY NOTES

Compiler's Notes.

As enacted, this section contained a heading which read, "Stay of execution pending appeal, etc."

CASE NOTES

Cited Kressly v. Kressly, 99 Idaho 348, 581 P.2d 806 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 770 et seq.

C.J.S. — 50 C.J.S., Judgments, § 1273 et seq.

§ 10-1305. Fees. — Any person filing a foreign judgment shall pay to the clerk of the court twenty-seven dollars ($27.00). Seven dollars ($7.00) of such fee shall be paid to the county treasurer for deposit in the district court fund of the county and twenty dollars ($20.00) of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the court technology fund. Fees for docketing, transcription or other enforcement proceedings shall be as provided for judgments of the district court of this state.

History.

I.C., § 10-1305, as added by 1974, ch. 64, § 1, p. 1142; am. 1979, ch. 219, § 6, p. 607; am. 2014, ch. 190, § 4, p. 506.

STATUTORY NOTES

Cross References.

Fees of clerk of district court, § 31-3201.

Court technology fund, § 1-1623.

State treasurer, § 67-1201 et seq.

Amendments.

The 2014 amendment, by ch. 190, substituted "twenty-seven dollars ($27.00)" for "seven dollars ($7.00)" in the first sentence and inserted the present second sentence in the section.

Effective Dates.

Section 7 of S.L. 1979, ch. 219 provided that the act should take effect July 1, 1979.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 770 et seq.

C.J.S. — 50 C.J.S., Judgments, § 1273 et seq.

§ 10-1306. Alternative remedies unimpaired. — The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this act remains unimpaired.

History.

I.C., § 10-1306, as added by 1974, ch. 64, § 1, p. 1142.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1974, ch. 64, which is codified as §§ 10-1301 to 10-1306, 10-1307, 10-1308.

As enacted this section contained a headline which read, "Alternative remedy to bring action to enforce judgment."

CASE NOTES

Cited Kressly v. Kressly, 99 Idaho 348, 581 P.2d 806 (1978); Andre v. Morrow, 106 Idaho 455, 680 P.2d 1355 (1984); Attorney Gen. ex rel. Her Majesty the Queen in Right of Can. v. Tysowski, 118 Idaho 737, 800 P.2d 133 (Ct. App. 1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments. § 770 et seq.

C.J.S. — 50 C.J.S., Judgments, § 1273 et seq.

§ 10-1306A. Recording of filed judgment. — A foreign judgment filed under this act shall not become a lien as provided in section 10-1110, Idaho Code, unless a transcript or abstract thereof, certified by the clerk of the Idaho court in which it has been filed, which certificate shall be made more than five (5) days after the filing of such judgment as provided in section 10-1303, Idaho Code, which judgment has not been stayed as provided by law, has been recorded with the recorder of any county of this state in the manner provided by section 10-1110, Idaho Code, and upon said recording shall be a lien from the date thereof.

History.

I.C., § 10-1306A, as added by 1975, ch. 14, § 1, p. 19.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 14 which is codified as this section.

CASE NOTES

Cited In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991); G & R Petro., Inc. v. Clements, 127 Idaho 119, 898 P.2d 50 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Judgments, § 770 et seq.

C.J.S. — 50 C.J.S., Judgments, § 1273 et seq.

§ 10-1307. Uniform construction of act. — This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

I.C., § 10-1307, as added by 1974, ch. 64, § 1, p. 1142.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1974, ch. 64, which is codified as §§ 10-1301 to 10-1306, 10-1307, 10-1308.

§ 10-1308. Citation of act. — This act may be cited as the "Enforcement of Foreign Judgments Act."

History.

I.C., § 10-1308, as added by 1974, ch. 64, § 1, p. 1142.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1974, ch. 64, which is codified as §§ 10-1301 to 10-1306, 10-1307, 10-1308.

§ 10-1309. Foreign orders — Reciprocal agreements — Public policy. — (1) No court, agency or tribunal of this state shall recognize, base a ruling on, or enforce an order issued under the law of another country, which order is manifestly incompatible with the public policy of this state.

(2) If an order issued under the law of another country is manifestly incompatible with the public policy of this state, a court may limit the enforcement of the order to the extent necessary to eliminate the conflict with public policy.

(3) No reciprocal agreement shall be entered into by this state with another country if the applicable laws of that country are manifestly incompatible with the public policy of this state.

(4) For purposes of this section:

(a) An order is manifestly incompatible with public policy if that order was issued in violation of the right of due process substantially similar to that guaranteed by the constitutions of the United States and the state of Idaho.

(b) A law of another country is manifestly incompatible with public policy if it fails to grant the parties the right of due process substantially similar to that guaranteed by the constitutions of the United States and the state of Idaho.

History.

I.C., § 10-1309, as added by 2015 (1st E.S.), ch. 1, § 65, p. 5.

STATUTORY NOTES

Legislative Intent.

Section 68 of S.L. 2015 (1st E.S.), ch. 1, provided: "Legislative Intent. It is the intent of the Legislature that the State of Idaho ensure the welfare of its residents by conducting its child and family support enforcement responsibilities with all due care. Cooperation with other jurisdictions, be they sister states or foreign countries, is vital to ensure that the children and

others of this state receive the support to which they are entitled and on which they depend. It is further the intent of the Legislature that the processes and procedures established by this act be used only for the important purposes for which they are intended. The Department of Health and Welfare shall, pursuant to Section 67 of this act, develop and maintain safeguards necessary to ensure that sensitive information about Idaho residents is not inappropriately disclosed so as to protect the privacy, safety or security of Idaho residents. If the petitioner is the subject of a no-contact order or similar protective order, the information disclosed shall not include the location of the Idaho resident. The state shall take all necessary steps to ensure the security of data and prevent disclosure to unauthorized persons, entities or jurisdictions. The Legislature finds that nothing in this act expands access to its databases beyond the access that already exists, and nothing in this act shall be construed to prohibit the exchange of data or information with other jurisdictions."

Section 69 of S.L. 2015 (1st E.S.), ch. 1, provided: "Report — Legislative Intent. The Governor or the Governor's designee shall monitor proceedings affecting Idaho residents that are conducted pursuant to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and make a report of such proceedings to the Legislature upon request. If at any time it appears that such proceedings are imperiling Idaho residents or affecting Idaho residents in an unjust manner, it is the intent of the Legislature that request be made to the federal government to file a denunciation under Article 64 of the Convention on behalf of the State of Idaho."

Compiler's Notes.

Section 70 of S.L. 2015 (1st E.S.), ch. 1, provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 71 of S.L. 2015 (1st E.S.), ch. 1 declared an emergency. Approved May 19, 2015.

Idaho Code Ch. 14

Chapter 14
UNIFORM FOREIGN COUNTRY MONEY JUDGMENTS RECOGNITION ACT

Sec.

10-1401. Short title.

10-1402. Definitions.

10-1403. Applicability.

10-1404. Standards for recognition of foreign country judgment.

10-1405. Personal jurisdiction.

10-1406. Procedure for recognition of foreign country judgment.

10-1407. Effect of recognition of foreign country judgment.

10-1408. Stay of proceedings pending appeal of foreign country judgment.

10-1409. Statute of limitations.

10-1410. Uniformity of interpretation.

10-1411. Savings clause.

Official Comment

PREFATORY NOTE

This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962. That Act codified the most prevalent common law rules with regard to the recognition of money judgments rendered in other countries. The hope was that codification by a state of its rules on the recognition of foreign-country money judgments, by satisfying reciprocity concerns of foreign courts, would make it more likely that money judgments rendered in that state would be recognized in other countries. Towards this end, the Act sets out the circumstances in which the courts in

states that have adopted the Act must recognize foreign-country money judgments. It delineates a minimum of foreign-country judgments that must be recognized by the courts of adopting states, leaving those courts free to recognize other foreign-country judgments not covered by the Act under principles of comity or otherwise. Since its promulgation over forty years ago, the 1962 Act has been adopted in a majority of the states and has been in large part successful in carrying out it purpose of establishing uniform and clear standards under which state courts will enforce the foreign-country money judgments that come within its scope.

This Act continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing application of the Act; (3) the need to set out the procedure by which recognition of a foreign-country money judgment under the Act must be sought; (4) the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law; (5) the need to expressly allocate the burden of proof with regard to the grounds for denying recognition; and (6) the need to establish a statute of limitations for recognition actions.

In the course of drafting this Act, the drafters revisited the decision made in the 1962 Act not to require reciprocity as a condition to recognition of the foreign-country money judgments covered by the Act. After much discussion, the drafters decided that the approach of the 1962 Act continues to be the wisest course with regard to this issue. While recognition of U.S. judgments continues to be problematic in a number of foreign countries, there was insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act. At the same time, the certainty and uniformity provided by the approach of the 1962 Act, and

continued in this Act, creates a stability in this area that facilitates international commercial transactions.

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§ 10-1401. Short title. — This chapter shall be known and may be cited as the "Uniform Foreign Country Money Judgments Recognition Act."

History.

I.C., § 10-1401, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former chapter 14 of Title 10, which comprised the following sections, was repealed by S.L. 2007, ch. 46, § 1.

10-1401. Definitions. [I.C., § 10-1401, as added by 1990, ch. 408, § 1, p. 1134.]

10-1402. Applicability. [I.C., § 10-1402, as added by 1990, ch. 408, § 1, p. 1134.]

10-1403. Recognition and enforcement. [I.C., § 10-1403, as added by 1990, ch. 408, § 1, p. 1134.]

10-1404. Grounds for nonrecognition. [I.C., § 10-1404, as added by 1990, ch. 408, § 1, p. 1134.]

10-1405. Personal jurisdiction. [I.C., § 10-1405, as added by 1990, ch. 408, § 1, p. 1134.]

10-1406. Stay in case of appeal. [I.C., § 10-1406, as added by 1990, ch. 408, § 1, p. 1134.]

10-1407. Savings clause. [I.C., § 10-1407, as added by 1990, ch. 408, § 1, p. 1134.]

10-1408. Uniformity of interpretation. [I.C., § 10-1408, as added by 1990, ch. 408, § 1, p. 1134.]

10-1409. Short title. [I.C., § 10-1409, as added by 1990, ch. 408, § 1, p. 1134.]

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment

Source: This section is an updated version of Section 9 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

§ 10-1402. Definitions. — In this chapter:

(1) "Foreign country" means a government other than: (a) The United States; (b) A state, district, commonwealth, territory or insular possession of the United States; or (c) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States Constitution.

(2) "Foreign country judgment" means a judgment of a court of a foreign country.

History.

I.C., § 10-1402, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1402 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment Source: This section is derived from Section 1 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

1. The defined terms "foreign state" and "foreign judgment" in the 1962 Act have been changed to "foreign country" and "foreign-country judgment" in order to make it clear that the Act does not apply to recognition of sister-state judgments. Some courts have noted that the "foreign state" and "foreign judgment" definitions of the 1962 Act have caused confusion as to whether the Act should apply to sister-state judgments because "foreign state" and "foreign judgment" are terms of art

generally used in connection with recognition and enforcement of sister-state judgments. *See, e.g., Eagle Leasing v. Amandus*, 476 N.W.2d 35 (Iowa 1991) (reversing lower court's application of UFMJRA to a sister-state judgment, but noting lower court's confusion was understandable as "foreign judgment" is term of art normally applied to sister-state judgments). *See also,* Uniform Enforcement of Foreign Judgments Act § 1 (defining "foreign judgment" as the judgment of a sister state or federal court).

The 1962 Act defines a "foreign state" as "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands." Rather than simply updating the list in the 1962 Act's definition of "foreign state," the new definition of "foreign country" in this Act combines the "listing" approach of the 1962 Act's "foreign state" definition with a provision that defines "foreign country" in terms of whether the judgments of the particular government's courts are initially subject to the Full Faith and Credit Clause standards for determining whether those judgments will be recognized. Under this new definition, a governmental unit is a "foreign country" if it is (1) not the United States or a state, district, commonwealth, territory or insular possession of the United States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

The Full Faith and Credit Clause, Art. IV, section 1, provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." Whether the judgments of a governmental unit are subject to the Full Faith and Credit Clause may be determined by judicial interpretation of the Full Faith and Credit Clause or by statute, or by a combination of these two sources. For example, pursuant to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress has passed 28 U.S.C. § 1738, which provides *inter alia* that court records from "any State, Territory, or Possession of the United States" are entitled to full faith and credit under the Full Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the United States Supreme Court held that this statute also requires

that full faith and credit be given to judgments of federal courts. States also have made determinations as to whether certain types of judgments are subject to the Full Faith and Credit Clause. *E.g. Day v. Montana Dept. of Social & Rehab. Servs.*, 900 P.2d 296 (Mont. 1995) (tribal court judgment not subject to Full Faith and Credit, and should be treated with same deference shown foreign-country judgments). Under the definition of "foreign country" in this Act, the determination as to whether a governmental unit's judgments are subject to full faith and credit standards should be made by reference to any relevant law, whether statutory or decisional, that is applicable "in this state."

The definition of "foreign country" in terms of those judgments not subject to Full Faith and Credit standards also has the advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a registration procedure for the enforcement of sister state and equivalent judgments, defines a "foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Uniform Enforcement of Foreign Judgments Act, § 1 (1964). By defining "foreign country" in the Recognition Act in terms of those judgments not subject to full faith and credit standards, this Act makes it clear that the Enforcement Act and the Recognition Act are mutually exclusive — if a foreign money judgment is subject to full faith and credit standards, then the Enforcement Act's registration procedure is available with regard to its enforcement; if the foreign money judgment is not subject to full faith and credit standards, then the foreign money judgment may not be enforced until recognition of it has been obtained in accordance with the provisions of the Recognition Act.

2. The definition of "foreign-country judgment" in this Act differs significantly from the 1962 Act's definition of "foreign judgment." The 1962 Act's definition served in large part as a scope provision for the Act. The part of the definition defining the scope of the Act has been moved to section 3 [§ 10-1403], which is the scope section.

3. The definition of "foreign-country judgment" in this Act refers to "a judgment" of "a court" of the foreign country. The foreign-country judgment need not take a particular form — any order or decree that meets the requirements of this section and comes within the scope of the Act

under Section 3 [§ 10-1403] is subject to the Act. Similarly, any competent government tribunal that issues such a "judgment" comes within the term "court" for purposes of this Act. The judgment, however, must be a judgment of an adjudicative body of the foreign country, and not the result of an alternative dispute mechanism chosen by the parties. Thus, foreign arbitral awards and agreements to arbitrate are not covered by this Act. They are governed instead by federal law, Chapter 2 of the U.S. Arbitration Act, 9 U.S.C. §§ 201-208, implementing the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Chapter 3 of the U.S. Arbitration Act, 9 U.S.C. §§ 301-307, implementing the Inter-American Convention on International Commercial Arbitration. A judgment of a foreign court confirming or setting aside an arbitral award, however, would be covered by this Act.

4. The definition of "foreign-country judgment" does not limit foreign-country judgments to those rendered in litigation between private parties. Judgments in which a governmental entity is a party also are included, and are subject to this Act if they meet the requirements of this section and are within the scope of the Act under Section 3 [§ 10-1403].

§ 10-1403. Applicability. — (1) Except as otherwise provided in subsection (2) of this section, this chapter applies to a foreign country judgment to the extent that the judgment:

(a) Grants or denies recovery of a sum of money; and

(b) Under the law of the foreign country where rendered, is final, conclusive and enforceable.

(2) This chapter does not apply to a foreign country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(a) A judgment for taxes;

(b) A fine or other penalty; or

(c) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(3) A party seeking recognition of a foreign country judgment has the burden of establishing that this chapter applies to the foreign country judgment.

History.

I.C., § 10-1403, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1403 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

CASE NOTES

Decisions Under Prior Law

Foreign Countries.

This section does not apply to judgments from sister states, only to judgments from foreign countries. LeaseFirst v. Burns, 131 Idaho 158, 953 P.2d 598 (1998).

RESEARCH REFERENCES

ALR. — Construction and application of Uniform Foreign Money-Judgments Recognition Act. 88 A.L.R.5th 545.

Official Comment

Source: This section is based on Section 2 of the 1962 Act. Subsection (b) [(2)] contains material that was included as part of the definition of "foreign judgment" in Section 1(2) of the 1962 Act. Subsection (c) [(3)] is new.

1. Like the 1962 Act, this Act sets out in subsection 3(a) [(1)] two basic requirements that a foreign-country judgment must meet before it comes within the scope of this Act — the foreign-country judgment must (1) grant or deny recovery of a sum of money and (2) be final, conclusive and enforceable under the law of the foreign country where it was rendered. Subsection 3(b) [(2)] then sets out three types of foreign-country judgments that are excluded from the coverage of this Act, even though they meet the criteria of subsection 3(a) [(1)] — judgments for taxes, judgments constituting fines and other penalties, and judgments in domestic relations matters. These exclusions are comparable to those contained in Section 1(2) of the 1962 Act.

2. This Act applies to a foreign-country judgment only to the extent the foreign-country judgment grants or denies recovery of a sum of money. If a foreign-country judgment both grants or denies recovery of a sum money and provides for some other form of relief, this Act would apply to the portion of the judgment that grants or denies monetary relief, but not to the portion that provides for some other form of relief. The U.S. court, however, would be left free to decide to recognize and enforce the non-

monetary portion of the judgment under principles of comity or other applicable law. See Section 11 [§ 10-1411].

3. In order to come within the scope of this Act, a foreign-country judgment must be final, conclusive, and enforceable under the law of the foreign country in which it was rendered. This requirement contains three distinct, although inter-related concepts. A judgment is final when it is not subject to additional proceedings in the rendering court other than execution. A judgment is conclusive when it is given effect between the parties as a determination of their legal rights and obligations. A judgment is enforceable when the legal procedures of the state to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in collection of the judgment.

While the first two of these requirements — finality and conclusiveness — will apply with regard to every foreign-country money judgment, the requirement of enforceability is only relevant when the judgment is one granting recovery of a sum of money. A judgment denying a sum of money obviously is not subject to enforcement procedures, as there is no monetary award to enforce. This Act, however, covers both judgments granting and those denying recovery of a sum of money. Thus, the fact that a foreign-country judgment denying recovery of a sum of money is not enforceable does not mean that such judgments are not within the scope of the Act. Instead, the requirement that the judgment be enforceable should be read to mean that, if the foreign-country judgment grants recovery of a sum of money, it must be enforceable in the foreign country in order to be within the scope of the Act.

Like the 1962 Act, subsection 3(b) [(2)] requires that the determinations as to finality, conclusiveness and enforceability be made using the law of the foreign country in which the judgment was rendered. Unless the foreign-country judgment is final, conclusive, and (to the extent it grants recovery of a sum of money) enforceable in the foreign country where it was rendered, it will not be within the scope of this Act.

4. Subsection 3(b) [(2)] follows the 1962 Act by excluding three categories of foreign-country money judgments from the scope of the Act — judgments for taxes, judgments that constitute fines and penalties, and judgments in domestic relations matters. The domestic relations exclusion

has been redrafted to make it clear that all judgments in domestic relations matters are excluded from the Act, not just judgments "for support" as provided in the 1962 Act. This is consistent with interpretation of the 1962 Act by the courts, which extended the "support" exclusion in the 1962 Act beyond its literal wording to exclude other money judgments in connection with domestic matters. *E.g.*, *Wolff v. Wolff*, 389 A.2d 413 (Md. App. 1978) ("support" includes alimony).

Recognition and enforcement of domestic relations judgments traditionally has been treated differently from recognition and enforcement of other judgments. The considerations with regard to those judgments, particularly with regard to jurisdiction and finality, differ from those with regard to other money judgments. Further, national laws with regard to domestic relations vary widely, and recognition and enforcement of such judgments thus is more appropriately handled through comity than through use of this uniform Act. Finally, other statutes, such as the Uniform Interstate Family Support Act and the federal International Child Support Enforcement Act, 42 U.S.C. § 659a (1996), address various aspects of the recognition and enforcement of domestic relations awards. Under Section 11 [§ 10-1411] of this Act, courts are free to recognize money judgments in domestic relations matters under principles of comity or otherwise, and U.S. courts routinely enforce money judgments in domestic relations matters under comity principles.

Foreign-country judgments for taxes and judgments that constitute fines or penalties traditionally have not been recognized and enforced in U.S. courts. *See, e.g.,* Restatement Third of the Foreign Relations Law of the United States § 483 (1986). Both the "revenue rule," under which the courts of one country will not enforce the revenue laws of another country, and the prohibition on enforcement of penal judgments seem to be grounded in the idea that one country does not enforce the public laws of another. *See id*. Reporters' Note 2. The exclusion of tax judgments and judgments constituting fines or penalties from the scope of the Act reflects this tradition. Under Section 11 [§ 10-1411], however, courts remain free to consider whether such judgments should be recognized and enforced under comity or other principles.

A judgment for taxes is a judgment in favor of a foreign country or one of its subdivisions based on a claim for an assessment of a tax. Thus, a

judgment awarding a plaintiff restitution of the purchase price paid for an item would not be considered in any part a judgment for taxes, even though one element of the recovery was the sales tax paid by the plaintiff at the time of purchase. Such a judgment would not be one designed to enforce the revenue laws of the foreign country, but rather one designed to compensate the plaintiff. Courts generally hold that the test for whether a judgment is a fine or penalty is determined by whether its purpose is remedial in nature, with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice. *E.g., Chase Manhattan Bank, N.A. v. Hoffman*, 665 F. Supp 73 (D. Mass. 1987) (finding that Belgium judgment was not penal even though the proceeding forming the basis of the suit was primarily criminal where Belgium court considered damage petition a civil remedy, the judgment did not constitute punishment for an offense against public justice of Belgium, and benefit of the judgment accrued to private judgment creditor, not Belgium). Thus, a judgment that awards compensation or restitution for the benefit of private individuals should not automatically be considered penal in nature and therefore outside the scope of the Act simply because the action is brought on behalf of the private individuals by a government entity. *Cf.* U.S.-Australia Free Trade Agreement, art. 14.7.2, U.S.-Austl., May 18, 2004 (providing that when government agency obtains a civil monetary judgment for purpose of providing restitution to consumers, investors, or customers who suffered economic harm due to fraud, judgment generally should not be denied recognition and enforcement on ground that it is penal or revenue in nature, or based on other foreign public law).

5. Under subsection 3(b) [(2)], a foreign-country money judgment is not within the scope of this Act "to the extent" that it comes within one of the excluded categories. Therefore, if a foreign-country money judgment is only partially within one of the excluded categories, the non-excluded portion will be subject to this Act.

6. Subsection 3(c) [(3)] is new. The 1962 Act does not expressly allocate the burden of proof with regard to establishing whether a foreign-country judgment is within the scope of the Act. Courts applying the 1962 Act generally have held that the burden of proof is on the person seeking recognition to establish that the judgment is final, conclusive and enforceable where rendered. *E.g., Mayekawa Mfg. Co. Ltd. v. Sasaki*, 888

P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish judgment is final, conclusive, and enforceable where rendered); *Bridgeway Corp. v. Citibank*, 45 F. Supp. 2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a final judgment, conclusive and enforceable where rendered); *S.C. Chimexim S.A. v. Velco Enterprises, Ltd.*, 36 F. Supp. 2d 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of establishing conclusive effect). Subsection (3)(c) [(3)] places the burden of proof to establish whether a foreign-country judgment is within the scope of the Act on the party seeking recognition of the foreign-country judgment with regard to both subsection (a) [(1)] and subsection (b) [(2)].

Idaho Code § 10-1404

§ 10-1404. Standards for recognition of foreign country judgment. —

(1) Except as otherwise provided in subsections (2) and (3) of this section, a court of this state shall recognize a foreign country judgment to which this chapter applies.

(2) A court of this state may not recognize a foreign country judgment if:

(a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) The foreign court did not have personal jurisdiction over the defendant; or

(c) The foreign court did not have jurisdiction over the subject matter.

(3) A court of this state need not recognize a foreign country judgment if:

(a) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(c) The judgment or the claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States;

(d) The judgment conflicts with another final and conclusive judgment;

(e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(4) A party resisting recognition of a foreign country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) of this section exists.

History.

I.C., § 10-1404, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1404 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

CASE NOTES

Cited Markin v. Grohmann, 153 Idaho 223, 280 P.3d 726 (2012).

Official Comment

Source: This section is based on Section 4 of the 1962 Act.

1. This Section provides the standards for recognition of a foreign-country money judgment. Section 7 [§ 10-1407] sets out the effect of recognition of a foreign-country money judgment under this Act.

2. Recognition of a judgment means that the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country. *See, e.g.* Restatement (Second) of Conflicts of Laws, Ch. 5, Topic 3, Introductory Note (recognition of foreign judgment occurs to the extent the forum court gives the judgment "the same effect with respect to the parties, the subject matter of the action and the issues

involved that it has in the state where it was rendered.") Recognition of a foreign-country judgment must be distinguished from enforcement of that judgment. Enforcement of the foreign-country judgment involves the application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign-country judgment. Recognition of a foreign-country money judgment often is associated with enforcement of the judgment, as the judgment creditor usually seeks recognition of the foreign-country judgment primarily for the purpose of invoking the enforcement procedures of the forum state to assist the judgment creditor's collection of the judgment from the judgment debtor. Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment. Recognition, however, also has significance outside the enforcement context because a foreign-country judgment also must be recognized before it can be given preclusive effect under res judicata and collateral estoppel principles. The issue of whether a foreign-country judgment will be recognized is distinct from both the issue of whether the judgment will be enforced, and the issue of the extent to which it will be given preclusive effect.

3. Subsection 4(a) [(1)] places an affirmative duty on the forum court to recognize a foreign-country money judgment unless one of the grounds for nonrecognition stated in subsection (b) [(2)] or (c) [(3)] applies. Subsection (b) [(2)] states three mandatory grounds for denying recognition to a foreign-country money judgment. If the forum court finds that one of the grounds listed in subsection (b) [(2)] exists, then it must deny recognition to the foreign-country money judgment. Subsection (c) [(3)] states eight nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. Subsection (d) [(4)] places the burden of proof on the party resisting recognition of the foreign-country judgment to establish that one of the grounds for nonrecognition exists.

4. The mandatory grounds for nonrecognition stated in subsection (b) [(2)] are identical to the mandatory grounds stated in Section 4 of the 1962 Act. The discretionary grounds stated in subsection 4(c)(1) [(3)(a)] through (6) [(3)(f)] are based on subsection 4(b)(1) through (6) of the 1962 Act. The

discretionary grounds stated in subsection 4(c)(7) [(3)(g)] and (8) [(3)(h)] are new.

5. Under subsection (b)(1) [(2)(a)], the forum court must deny recognition to the foreign-country money judgment if that judgment was "rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law." The standard for this ground for nonrecognition "has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S. 113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved." Cmt § 4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. *Kam-Tech Systems, Ltd. V. Yardeni,* 774 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord, Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under subsection (b)(1) [(2)(a)], so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding. As the U.S. Supreme Court stated in *Hilton:*

[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect [then a foreign-country judgment should be recognized.] *Hilton*, 159 U.S. at 202.

6. Under section 4(b)(2) [(2)(b)], the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) [§ 10-1405(1)] lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) [§ 10-1405(2)] makes clear that other grounds for personal jurisdiction may be found sufficient.

7. Subsection 4(c)(2) [(3)(b)] limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the foreign-country judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the foreign proceeding. Intrinsic fraud does not provide a basis for denying recognition under subsection 4(c)(2) [(3)(b)], as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in subsection 4(c)(3) [(3)(c)] is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether "the [cause of action] [claim for relief] on which the judgment is based" is repugnant to public policy. Based on this "cause of action" language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. *E.g.*, *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory

note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy); *Guinness PLC v. Ward*, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); *The Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); cf. *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). Subsection 4(c)(3) [(3)(c)] rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. Cf. Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although subsection 4(c)(3) [(3)(c)] of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in subsection 4(c)(3) [(3)(c)], which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g.*, *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (Sup. Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. Subsection 4(c)(5) [(3)(e)] allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

10. Subsection 4(c)(6) [(3)(f)] authorizes the forum court to refuse recognition of a foreign-country judgment that was rendered in the foreign country solely on the basis of personal service when the forum court believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens*.

11. Subsection 4(c)(7) [(3)(g)] is new. Under this subsection, the forum court may deny recognition to a foreign-country judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with subsection 4(b)(1) [(2)(a)], which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, subsection 4(b)(1) [(2)(a)] focuses on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair. *See, e.g., The Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); *CIBC Mellon Trust Co. v. Mora Hotel Corp,. N.V.*, 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, subsection 4(c)(7) [(3)(g)] allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not

provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. Subsection 4(c)(8) [(3)(h)] also is new. It allows the forum court to deny recognition to the foreign-country judgment if the court finds that the specific proceeding in the foreign court was not compatible with the requirements of fundamental fairness. Like subsection 4(c)(7) [(3)(g)], it can be contrasted with subsection 4(b)(1) [(2)(a)], which requires the forum court to deny recognition to the foreign-country judgment if the forum court finds that the entire judicial system in the foreign country where the foreign-country judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of subsection 4(b)(1) [(2)(a)] is on the foreign country's judicial system as a whole, the focus of subsection 4(c)(8) [(3)(h)] is on the particular proceeding that resulted in the specific foreign-country judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.

Subsections 4(c)(7) [(3)(g)] and (8) [(3)(h)] both are discretionary grounds for denying recognition, while subsection 4(b)(1) [(2)(a)] is mandatory. Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the foreign-country judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting

recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. Under subsection 4(d) [(4)], the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition set out in subsection 4(b) [(2)] or (c) [(3)] applies. The 1962 Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the 1962 Act took different positions on the issue. *Compare Bridgeway Corp. v. Citibank*, 45 F. Supp. 2d 276, 285 (S.D.N.Y. 1999) (plaintiff has burden to show no mandatory basis under 4(a) for nonrecognition exists; defendant has burden regarding discretionary bases) *with The Courage Co. LLC v. The ChemShare Corp.*, 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition). Because the grounds for nonrecognition in Section 4 [§ 10-1404] are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment.

§ 10-1405. Personal jurisdiction. — (1) A foreign country judgment may not be refused recognition for lack of personal jurisdiction if:

(a) The defendant was served with process personally in the foreign country;

(b) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(c) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(e) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a claim for relief arising out of business done by the defendant through that office in the foreign country; or

(f) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a claim for relief arising out of that operation.

(2) The list of bases for personal jurisdiction in subsection (1) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (1) of this section as sufficient to support a foreign country judgment.

History.

I.C., § 10-1405, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1405 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment

Source: This provision is based on Section 5 of the 1962 Act. Its substance is the same as that of Section 5 of the 1962 Act, except as noted in Comment 2 below with regard to subsection 5(a)(4) [(1)(d)].

1. Under section 4(b)(2) [§ 10-1404(2)(b)], the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) [(1)] lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) [(2)] makes it clear that these bases of personal jurisdiction are not exclusive. The forum court may find that the foreign court had personal jurisdiction over the defendant on some other basis.

2. Subsection 5(a)(4) of the 1962 Act provides that the foreign court had personal jurisdiction over the defendant if the defendant was "a body corporate" that "had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state." Subsection 5(a)(4) [(1)(d)] of this Act extends that concept to forms of business organization other than corporations.

3. Subsection 5(a)(3) [(1)(c)] provides that the foreign court has personal jurisdiction over the defendant if the defendant agreed before commencement of the proceeding leading to the foreign-country judgment to submit to the jurisdiction of the foreign court with regard to the subject matter involved. Under this provision, the forum court must find both the existence of a valid agreement to submit to the foreign court's jurisdiction and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

§ 10-1406. Procedure for recognition of foreign country judgment. — (1) If recognition of a foreign country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign country judgment.

(2) If recognition of a foreign country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

History.

I.C., § 10-1406, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1406 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment

Source: This section is new.

1. Unlike the 1962 Act, which was silent as to the proper procedure for seeking recognition of a foreign-country judgment, Section 6 [this section] of this Act expressly sets out the ways in which the issue of recognition may be raised. Under section 6 [this section], the issue of recognition always must be raised in a court proceeding. Thus, section 6 [this section] rejects decisions under the 1962 Act holding that the registration procedure found in the Uniform Enforcement of Foreign Judgments Act could be utilized with regard to recognition of a foreign-country judgment. *E.g. Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7th Cir. 2000). The

Enforcement Act deals solely with the *enforcement* of sister-state judgments and other judgments entitled to full faith and credit, not with the *recognition* of foreign-country judgments.

More broadly, section 6 [this section] rejects the use of any registration procedure in the context of the foreign-country judgments covered by this Act. A registration procedure represents a balance between the interest of the judgment creditor in obtaining quick and efficient recognition and enforcement of a judgment when the judgment debtor has already been provided with an opportunity to litigate the underlying issues, and the interest of the judgment debtor in being provided an adequate opportunity to raise and litigate issues regarding whether the foreign-country judgment should be recognized. In the context of sister-state judgments, this balance favors use of a truncated procedure such as that found in the Enforcement Act. Recognition of sister-state judgments normally is mandated by the Full Faith and Credit Clause. Courts recognize only a very limited number of grounds for denying full faith and credit to a sister-state judgment — that the rendering court lacked jurisdiction, that the judgment was procured by fraud, that the judgment has been satisfied, or that the limitations period has expired. Thus, the judgment debtor with regard to a sister-state judgment normally does not have any grounds for opposing recognition and enforcement of the judgment. The extremely limited grounds for denying full faith and credit to a sister-state judgment reflect the fact such judgments will have been rendered by a court that is subject to the same due process limitations and the same overlap of federal statutory and constitutional law as the forum state's courts, and, to a large extent, the same body of court precedent and socio-economic ideas as those shaping the law of the forum state. Therefore, there is a strong presumption of fairness and competence attached to a sister-state judgment that justifies use of a registration procedure.

The balance between the benefits and costs of a registration procedure is significantly different, however, in the context of recognition and enforcement of foreign-country judgments. Unlike the limited grounds for denying full faith and credit to a sister-state judgment, this Act provides a number of grounds upon which recognition of a foreign-country judgment may be denied. Determination of whether these grounds apply requires the forum court to look behind the foreign-country judgment to evaluate the

law and the judicial system under which the foreign-country judgment was rendered. The existence of these grounds for nonrecognition reflects the fact there is less expectation that foreign-country courts will follow procedures comporting with U.S. notions of fundamental fairness and jurisdiction or that those courts will apply laws viewed as substantively tolerable by U.S. standards than there is with regard to sister-state courts. In some situations, there also may be suspicions of corruption or fraud in the foreign-country proceedings. These differences between sister-state judgments and foreign-country judgments provide a justification for requiring judicial involvement in the decision whether to recognize a foreign-country judgment in all cases in which that issue is raised. Although the threshold for establishing that a foreign-country judgment is not entitled to recognition under Section 4 [§ 10-1404] is high, there is a sufficiently greater likelihood that significant recognition issues will be raised so as to require a judicial proceeding.

2. This Section contemplates that the issue of recognition may be raised either as an original matter or in the context of a pending proceeding. Subsection 6(a) [(1)] provides that in order to raise the issue of recognition of a foreign-country judgment as an initial matter, the party seeking recognition must file an action for recognition of the foreign-country judgment. Subsection 6(b) [(2)] provides that when the recognition issue is raised in a pending proceeding, it may be raised by counterclaim, cross-claim or affirmative defense, depending on the context in which it is raised. These rules are consistent with the way the issue of recognition most often was raised in most states under the 1962 Act.

3. An action seeking recognition of a foreign-country judgment under this Section is an action on the foreign-country judgment itself, not an action on the underlying cause of action that gave rise to that judgment. The parties to an action under Section 6 [this section] may not relitigate the merits of the underlying dispute that gave rise to the foreign-country judgment.

4. While this Section sets out the ways in which the issue of recognition of a foreign-country judgment may be raised, it is not intended to create any new procedure not currently existing in the state or to otherwise effect existing state procedural requirements. The parties to an action in which recognition of a foreign-country judgment is sought under Section 6 [this section] must comply with all state procedural rules with regard to that type

of action. Nor does this Act address the question of what constitutes a sufficient basis for jurisdiction to adjudicate with regard to an action under Section 6 [this section]. Courts have split over the issue of whether the presence of assets of the debtor in a state is a sufficient basis for jurisdiction in light of footnote 36 of the U.S. Supreme Court decision in Shaffer v. Heitner, 433 U.S. 186, 210 n.36 (1977). This Act takes no position on that issue.

5. In states that have adopted the Uniform Foreign-Money Claims Act, that Act will apply to the determination of the amount of a money judgment recognized under this Act.

§ 10-1407. Effect of recognition of foreign country judgment. — If the court in a proceeding under section 10-1406, Idaho Code, finds that the foreign country judgment is entitled to recognition under this chapter then, to the extent that the foreign country judgment grants or denies recovery of a sum of money, the foreign country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this state.

History.

I.C., § 10-1407, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1407 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment

Source: The substance of subsection 7(1) is based on Section 3 of the 1962 Act. Subsection 7(2) is new.

1. Section 5 [§ 10-1405] of this Act sets out the standards for the recognition of foreign-country judgments within the scope of this Act, and places an affirmative duty on the forum court to recognize any foreign-country judgment that meets those standards. Section 6 [§ 10-1406] of this Act sets out the procedures by which the issue of recognition may be raised.

This Section sets out the consequences of the decision by the forum court that the foreign-country judgment is entitled to recognition.

2. Under subsection 7(1), the first consequence of recognition of a foreign-country judgment is that it is treated as conclusive between the parties in the forum state. Section 7(1) does not attempt to establish directly the extent of that conclusiveness. Instead, it provides that the foreign-country judgment is treated as conclusive to the same extent that a judgment of a sister state that had been determined to be entitled to full faith and credit would be conclusive. This means that the foreign-country judgment generally will be given the same effect in the forum state that it has in the foreign country where it was rendered. Subsection 7(1), however, sets out the minimum effect that must be given to the foreign-country judgment once recognized. The forum court remains free to give the foreign-country judgment a greater preclusive effect in the forum state than the judgment would have in the foreign country where it was rendered. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 481 cmt *c* (1986).

3. Under subsection 7(2), the second consequence of recognition of a foreign-country judgment is that, to the extent it grants a sum of money, it is enforceable in the forum state in accordance with the procedures for enforcement in the forum state and to the same extent that a judgment of the forum state would be enforceable. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States § 481 (1986) (judgment entitled to recognition is enforceable in accordance with the procedure for enforcement of judgments applicable where enforcement is sought). Thus, under subsection 7(2), once recognized, the foreign-country judgment has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying a judgment of a comparable court in the forum state, and can be enforced or satisfied in the same manner as such a judgment of the forum state.

§ 10-1408. Stay of proceedings pending appeal of foreign country judgment. — If a party establishes that an appeal from a foreign country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

History.

I.C., § 10-1408, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1408 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment Source: This section is the same substantively as section 6 of the 1962 Act, except that it adds as an additional measure for the duration of the stay "the time for appeal expires."

1. Under Section 3 [§ 10-1403] of this Act, a foreign-country judgment is not within the scope of this Act unless it is conclusive and enforceable where rendered. Thus, if the effect of appeal under the law of the foreign country in which the judgment was rendered is to prevent it from being conclusive or enforceable between the parties, the existence of a pending appeal in the foreign country would prevent the application of this Act. Section 8 [this section] addresses a different situation. It deals with the situation in which either (1) the party seeking a stay has demonstrated that it intends to file an appeal in the foreign country, although the appeal has not yet been filed or (2) an appeal has been filed in the foreign country, but

under the law of the foreign country filing of an appeal does not affect the conclusiveness or enforceability of the judgment. Section 8 [this section] allows the forum court in those situations to determine in its discretion that a stay of proceedings is appropriate.

Idaho Code § 10-1409

§ 10-1409. Statute of limitations. — An action to recognize a foreign country judgment must be commenced within the earlier of the time during which the foreign country judgment is effective in the foreign country or fifteen (15) years from the date that the foreign country judgment became effective in the foreign country.

History.

I.C., § 10-1409, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Prior Laws.

Former § 10-1409 was repealed. See Prior Laws, § 10-1401.

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment Source: This Section is new. The 1962 Act did not contain a statute of limitations. Some courts applying the 1962 Act have used the state's general statute of limitations, *e.g., Vrozos v. Sarantopoulos*, 552 N.E.2d 1053 (Ill. App. 1990) (as Recognition Act contains no statute of limitations, general five-year statute of limitations applies), while others have used the statute of limitations applicable with regard to enforcement of a domestic judgment, *e.g., La Societe Anonyme Goro v. Conveyor Accessories, Inc.*, 677 N.E. 2d 30 (Ill. App. 1997).

1. Under Section 3 [§ 10-1403] of this Act, this Act only applies to foreign-country judgments that are conclusive, and if the judgment grants recovery of a sum of money, enforceable where rendered. Thus, if the period of effectiveness of the foreign-country judgment has expired in the foreign country where the judgment was rendered, the foreign-country

judgment would not be subject to this Act. This means that the period of time during which a foreign-country judgment may be recognized under this Act normally is measured by the period of time during which that judgment is effective (that is, conclusive and, if applicable, enforceable) in the foreign country that rendered the judgment. If, however, the foreign-country judgment remains effective for more than fifteen years after the date on which it became effective in the foreign country, Section 9 [this section] places an additional time limit on recognition of a foreign-country judgment. It provides that, if the foreign-country judgment remains effective between the parties for more than fifteen years, then an action to recognize the foreign-country judgment under this Act must be commenced within that fifteen year period.

2. Section 9 [this section] does not address the issue of whether a foreign-country judgment that can no longer be the basis of a recognition action under this Act because of the application of the fifteen-year limitations period in Section 9 [this section] may be used for other purposes. For example, a common rule with regard to judgments barred by a statute of limitations is that they still may be used defensively for purposes of offset and for their preclusive effect. The extent to which a foreign-country judgment with regard to which a recognition action is barred by Section 9 [this section] may be used for these or other purposes is left to the other law of the forum state.

§ 10-1410. Uniformity of interpretation. — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

I.C., § 10-1410, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment Source: This Section is substantively the same as Section 8 of the 1962 Act. The section has been rewritten to reflect current NCCUSL practice.

§ 10-1411. Savings clause. — This chapter does not prevent the recognition under principles of comity or otherwise of a foreign country judgment not within the scope of this chapter.

History.

I.C., § 10-1411, as added by 2007, ch. 46, § 2, p. 115.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2007, ch. 46 provided that the act should take effect on and after July 1, 2007, and shall apply to all actions commenced on or after July 1, 2007, in which the issue of recognition of a foreign country judgment is raised.

Official Comment 1. Section 3 [§ 10-1411] of this Act provides that this Act applies only to certain foreign-country judgments that grant or deny recovery of a sum of money. The purpose of this Act is to establish the minimum standards for recognition of those judgments. Section 11 [this section] makes clear that no negative implication should be read from the fact that this Act does not provide for recognition of other foreign-country judgments. Rather, this Act simply does not address the issue of whether foreign-country judgments not within its scope under Section 3 [§ 10-1411] should be recognized. Courts are free to recognize those foreign-country judgments not within the scope of this Act under common law principles of comity or other applicable law.

Chapter 15
UNIFORM FOREIGN-MONEY CLAIMS ACT

Sec.

10-1501. Definitions.

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§ 10-1501. Definitions. — As used in this chapter:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is:

(i) Paid to a claimant in an action or distribution proceeding;

(ii) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(iii) Used to recoup, set-off or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one (1) or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by inter-governmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 10-1504, Idaho Code.

(9) "Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint

venture, partnership, association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one (1) country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two (2) days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

History.

I.C., § 10-1501, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. "Action." A suit or arbitration may be legal or equitable in nature, but it must be based on a pecuniary claim.

2. "Bank-offered spot rate" is the rate at which a bank will sell the requisite amount of foreign money for immediate or nearly immediate use by the buyer.

3. "Conversion date." Exchange rates may fluctuate from day to day. A date must be picked for calculating the value of foreign money in terms of

United States dollars. As used in the Act, "conversion date" means the day before a foreign-money claim is paid or set-off. The day refers to the time period of the place of the payor, not necessarily that of the recipient. The exchange rate prevailing at or near the close of business on the banking day before the day payment is made will be well known at the time of payment. See Comment 2 to Section 7 [§ 10-1507].

4. "Distribution proceeding." In keeping with the concept underlying Section 2 [§ 10-1502], the coverage of this statute is limited to judicial actions and nonjudicial proceedings which involve the creation of a fund from which pro-rata distributions are made to claimants. As provided in Section 8 [§ 10-1508], a different conversion date is required where either input to or outgo from a fund involves two or more different moneys. Thus, the term includes a mortgage foreclosure proceeding, judicial or under a trust deed, distribution of property in divorce and child support proceedings, distributions in the administration of a trust or a decedent's estate, an assignment for the benefit of creditors, an equity receivership, a liquidation by a statutory successor, a voluntary dissolution of a business or a nonprofit enterprise or the like when in each case a fund must be shared among claimants and where, usually, the fund will not satisfy all claimants of the same class. An asset or a liability of the fund must also involve one or more foreign-money claims, but not all of the claims can be in the same money.

5. "Foreign money." Since only the federal government has the power to coin money and regulate the value thereof, the term "foreign" means a government other than that of the United States of America. Special Drawing Rights of the International Monetary Fund are foreign money even though the United States is a member of the Fund. Foreign governments included are all those whose moneys are, in the currency markets of the world, exchangeable for the money of other currencies even though the government is not recognized by the United States.

6. "Foreign-money claim." The term "claim" is not limited to any one party to an action or a distribution proceeding and may be asserted by a plaintiff or a defendant or by a party to an arbitration or distribution proceeding. It may be based on a foreign judgment, or sound in contract, quasi-contract, or tort.

7. “Money.” The definition includes composite currencies such as European Currency Units created by agreement of the governments that are members of the European Monetary System or the Special Drawing Rights created under the auspices of the International Money Fund. These are ‘stores of value’ used to determine the quantity of payment in some international transactions.

8. “Money of the claim.” See Section 4 [§ 10-1504] and the Comment thereto.

9. “Party.” This combines the Uniform Commercial Code’s definitions of “person” and “organization,” but is limited to those who are parties to transactions or involved in events which could give rise to a foreign-money claim.

10. “Rate of Exchange.” A free market rate is to be used rather than an official rate if both exist. Some countries have transactional differences in exchange rates with slightly different rates; for example, in Belgium one rate prevails for commercial and another for financial transactions. Both rates are recognized in money market transactions. The last sentence of the definition indicates that the rate appropriate to the transaction is the rate to be used.

11. “Spot rate” is the term used in the financial markets of the United States for the rate of exchange for immediate or nearly immediate transfers from one money to another, as distinguished from the rates for future options or future deliveries.

In the foreign exchange markets, as in the stock markets, quotations are either “bid” or “ask,” and the spread between is where the dealer makes a profit. An “offered spot rate” is the rate at which the offeror will sell the particular money. It is, of course, higher than the rate at which that person will buy the same money. “Spot” refers to the time the trade is made, not the time for settlement, which in spot transactions is often two days after the date of the trade.

12. “State.” The definition, as in other Uniform Laws, is extended to include areas given the same, or nearly the same, treatment in law as the states.

§ 10-1502. Scope. — (a) This chapter applies only to a foreign-money claim in an action or distribution proceeding.

(b) This chapter applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

History.

I.C., § 10-1502, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment Under the rules of the conflict of laws, the determination of when a foreign money is converted to United States dollars is generally considered a procedural matter for the law of the forum. Subsection (b) removes any doubt.

§ 10-1503. Variation by agreement. — (a) The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one (1) aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

History.

I.C., § 10-1503, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. A basic policy of the Act is to preserve freedom of contract and to permit parties to resolve disputed matters by contract at any time, even as to choice of law problems. The parties may agree upon the date and time for conversion. After entry of judgment the parties may agree upon how the judgment is to be satisfied.

2. Subsection (b) covers cases where, for example, claims for petroleum may be settled in United States dollars but settlement for joint costs of exploration may be in pounds sterling. The parties also may agree on the money to be used for damages. The second sentence recognizes that a price stated in a particular money does not indicate, without more evidence, an intent that all damages from breach are to be in the same money. The principle of freedom of contract allows the parties to allocate the risks of currency fluctuations between foreign moneys as they desire. Sections 4 [§

10-1504] and 5 [§ 10-1505] provide rules in the absence of special agreements by the parties for determining the money to be used. Parties may by agreement select a particular market or foreign exchange dealer to be used for exchange purposes.

§ 10-1504. Determining money of the claim. — (a) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) Regularly used between the parties as a matter of usage or course of dealing;

(2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) In which the loss was ultimately felt or will be incurred by the party claimant.

History.

I.C., § 10-1504, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. Subsection (a) uses "payment" in a broad sense not related to just the price, but to any obligation arising out of a contract to transfer money. See also Section 3(b) [§ 10-1503(b)].

2. Subsection (b) states rules to fill gaps in the agreement of the parties with rules as to the allocation of risks of fluctuations in exchange rates. The three rules will normally apply in the order stated. Prior dealings may indicate the desired money. If there are none, it is appropriate to use the money indicated by trade usage or custom for transactions of like kind. The final rule of subsection (a) is one established in English cases. See *The*

Despina R and the Folias, (1979) A.C. 685. An example is the use of an operating account in United States dollars by a French company to buy Japanese yen for ship repairs; the loss is felt in the depletion of the dollar bank account. Appropriateness of a rule is to be determined by the judge from the facts of the case. See Section 6(d) [§ 10-1506(d)].

§ 10-1505. Determining amount of the money of certain contract claims. — (a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty (30) days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

History.

I.C., § 10-1505, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. Subsections (a) and (b) cover different interpretation problems. One arises where the amount of the money to be paid is measured by another money, one of which is foreign. An example is "pay 5,000 Swiss francs in pounds sterling." The issue is the time at which the rate of exchange into pounds sterling is to be applied. Subsection (a) says in a "measured by"

situation with no rate specified, the rate of exchange that controls is the one prevailing at or near the close of business on the day before the day of payment. See Section 1(3) [§ 10-1501(3)], the definition of "conversion date."

2. Another problem arises when an exchange rate in effect before a default is used, as in "pay on November 30, 1989, 5,000 Swiss francs in pounds sterling at the exchange rate prevailing on June 30, 1989." In this case, the issue is how long does the specified exchange rate control in the absence of a clear expression of intent?

Inclusion of a fixed rate as of a date before default, under subsection (b), remains effective only if payment is made within a reasonable time after default, not to exceed 30 days. The 30-day limitation accords usually with the expectation of the parties. Parties may agree to a longer time.

3. The most common application of subsection (c) will be found in international loan transactions. For example, a loan by a Japanese bank to an American company could be made with dollars purchased by yen for the purpose. The loan agreement could provide for repayment in dollars of an amount which, when received by the lender, would repurchase the amount of yen used to acquire the dollars advanced.

An exemption is needed from the application of usury laws that may be interpreted to hold that the indexing of the principal amount creates additional interest. See *Aztec Properties, Inc. v. Union Planters National Bank*, 530 S.W.2d 756 (Tenn. Sup. Ct. 1975). The subsection removes all doubts as to the legal enforceability of such agreements under theories such as usury, merger in a judgment, unconscionability, or the like.

§ 10-1506. Asserting and defending foreign-money claim. — (a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(c) A person may assert a defense, set-off, recoupment or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim is a question of law.

History.

I.C., § 10-1506, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. Subsection (a) covers not only the claim of a plaintiff but also the assertion by a defendant of a defense, set-off, or counterclaim. Subsection (b) provides that the money asserted as the money of its defenses by the defendant need not be the same as that of the plaintiff.

2. The money to be used as the money of the claim is a threshold issue to be determined, if contested, by the court after any factual issues as to expenditures, custom, usage, or course of dealing are decided. See subsection (b). If a payment is made or a debt incurred in a money other than that in which the loss was felt, the party asserting the foreign-money claim should establish the amount of the money of the claim used to procure the money of expenditure and the applicable exchange rate used.

3. Judgments may be entered in more than one money when dealings impact on more than one area. An inn-keeper in Mexico, for example, in taking in customers from many countries, should be held to foresee that treatment for injuries at the inn would occur not only in Mexico, but also in the native land of the injured party or in a third country.

§ 10-1507. Judgments and awards on foreign-money claims — Times of money conversion — Form of judgment. — (a) Except as provided in subsection (c) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(e) A judgment or award made in an action or distribution proceeding on both (i) a defense, set-off, recoupment or counterclaim and (ii) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

(f) A judgment substantially in the following form complies with subsection (a) of this section:

> IT IS ADJUDGED AND ORDERED, that Defendant ..... (insert name) ..... pay to Plaintiff ..... (insert name) ..... the sum of ..... (insert amount in the foreign money) ..... plus interest on that sum at the rate of ..... (insert rate — see section 10-1509, Idaho Code) ..... percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the ..... (insert name of foreign money) ..... with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of ..... (insert amount) ..... United States dollars.

(g) If a contract claim is of the type covered by section 10-1505(a) or (b), Idaho Code, the judgment or award must be entered for the amount of

money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment must be filed with the district court, and recorded with the county recorder, in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

History.

I.C., § 10-1507, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. Subsection (a) changes a number of statutes in the states which can be construed to require all values in legal proceedings to be expressed in United States dollars. Professor Brand, in his article in the Yale Journal of International Law, Vol. 11:139 at page 169, identified 18 states having statutes which could require all judgments to be entered in dollars. They are Arkansas, California, Idaho, Iowa, Louisiana, Maryland, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Brand, ibid. fn. 166. Hence, direct statutory authority must be given the courts in those states, and will be helpful in other states. In some states other statutes may need amendments. See, e.g., Wisc. Stats. §§ 138.01, 138.02, 138.03, and 779.05.

2. Subsection (d) gives defendants the option of paying in dollars which are, at the payment date, practically the economic equivalent of the foreign money awarded. The judgment creditor should be indifferent to whether the debtor exercises the right to pay in dollars as the only difference is a small bank charge for exchanging the dollars for the foreign money. The concept

of the rate of the banking day next before the payment day is taken from Section 131 of the Province of Ontario, Canada, Courts of Justice Act (Ch. 11 Ont. Stats. (1984) as recently amended). It gives the defendant and the sheriff conducting the sale the necessary conversion rate comfortably ahead of its use. Newspaper quotations are usually said to be "at or near the close of business" on the stated date, so that phrase is used in this Act.

3. Subsection (e) provides for netting the affirmative recoveries of a defendant and plaintiff, whether in the same money or in different moneys, but preserving the quantum of each for appellate purposes. The theory is that when claims are reduced to money, they become mutual debts and should be set-off, so that a person's exchange rate fluctuation risk continues only for the surplus in its money of the claim. The set-off is made by the judge or arbitrator.

4. The form of judgment in subsection (f) should be varied appropriately where the money to be paid is measured by a foreign money. See Section 5 [§ 10-1505].

§ 10-1508. Conversions of foreign money in distribution proceeding. — The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

History.

I.C., § 10-1508, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment All claims must be in the same money when determining aliquot shares in a distribution proceeding. The Act requires use of the date the proceeding was initiated for applying the exchange rate to convert foreign-money claims into United States dollars. See *Re Lines Bros. Ltd.*, (1982) 2 All E.R. 99. A claim may be amended to show the proper conversion rate and the proper amount of United States dollars.

§ 10-1509. Prejudgment and judgment interest. — (a) With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (b) of this section, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

(b) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

History.

I.C., § 10-1509, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. As to prejudgment interest, the Act adopts the majority rule in the United States that prejudgment interest follows the substantive law of the case under conflict of laws rules, both as to the right to recover and the rate. English courts use a different rule, i.e., the borrowing rate used by plaintiff or prevailing in the country issuing the money of the judgment. See *Helmsing Schiffarts G.M.B.H. v. Malta Drydock Corp.* (1977) 2 Lloyd's Rep. 44 (Maltese money but borrowed in West Germany; German rate); *Miliangos v. George Frank (Textiles) Ltd. (No. 2)* (1976) 1 QB 487 at 489 (Swiss money, Swiss interest rate). Although prejudgment interest is one

form of damages, provision for prejudgment interest is not to be taken as indicating that no other damages for delay in payment can be awarded under the substantive law applicable to the determination of damages. Cf. *Isaac Naylor & Sons, Ltd. v. New Zealand Co-operative Wool Marketing Association, Ltd.* (1981) 1 N.Z.L.R. 361 (exchange loss due to delay as additional damages).

2. Allowances of prejudgment interest in some states depend upon a party's conduct with respect to settlement or delay of the proceeding. Subsection (b) treats these state laws as either procedural in nature or expressions of a significant policy, in either case to be governed by the law of the forum state.

3. Interest on a judgment is considered to be procedural and also goes by the law of the forum. There is a problem here in that there is great discrepancy among the states in the rates for judgment interest. When a judgment is in a foreign money, United States interest rates may result in some overcompensation or undercompensation as compared to what would be awarded in the jurisdiction issuing the foreign money. But in both the United States and in foreign countries, most jurisdictions have fixed statutory rates that do not readily respond to the inflation or deflation of the value of their money in the world market. Hence it was decided to apply the usual rules of the conflict of laws.

§ 10-1510. Enforcement of foreign judgments. — (a) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in section 10-1507, Idaho Code, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be filed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(c) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(d) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

History.

I.C., § 10-1510, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. Some states have special acts that simply cover the recognition, entry, and enforcement of foreign judgments. Common law enforcement is by action. Subsection (a) refers to the common law method; it is subject to subsection (b) which refers to statutory procedures. Subsection (c) applies to both procedures.

2. Subsection (d) avoids constitutional issues under the full faith and credit clause by requiring that judgments of sister states be enforced as entered in the sister state.

§ 10-1511. Determining United States dollar value of foreign-money claims for limited purposes. — (a) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court required undertaking, must be ascertained as provided in subsections (c) and (d) of this section.

(c) A party seeking process, costs, bond or other undertaking under subsection (b) of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court required undertaking.

(d) A party seeking the process, costs, bond or other undertaking under subsection (b) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

History.

I.C., § 10-1511, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

This section protects those who must determine how much should be held subject to a levy or other collection process or what the dollar amount of a supersedeas or other surety bond should be. If the judgment debtor is damaged by a gross overstatement of the dollar amount in the affidavit or certificate of counsel for the judgment creditor or the bank officer, recovery should be against that person.

§ 10-1512. Effect of current revalorization. — (a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

History.

I.C., § 10-1512, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment

1. Subsection (a) refers to situations in which a country authorizes the issue of a new money to take the place of the old money at a stated ratio. An example is Brazil's recent abolition of cruzieros for cruzados. The subsection mandates that foreign money claims should be subjected to the same ratio.

2. The Act takes no position on the effect of money repudiations or revalorizations so drastic as to be, in effect, confiscations. Remedy, if any, for these is usually found through diplomatic channels. Equally, the Act takes no position on the effect of exchange control laws. The effect, if any, on obligations to pay is left to other law.

§ 10-1513. Supplementary general principles of law. — Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

History.

I.C., § 10-1513, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

Official Comment The section is taken from Section 1-103 of the Uniform Commercial Code.

§ 10-1514. Uniformity of application and construction. — This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History.

I.C., § 10-1514, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

§ 10-1515. Short title. — This chapter may be cited as the "Uniform Foreign-Money Claims Act."

History.

I.C., § 10-1515, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

§ 10-1516. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 10-1516, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

§ 10-1517. Transitional provision. — This chapter applies to actions and distribution proceedings commenced after its effective date.

History.

I.C., § 10-1517, as added by 2001, ch. 329, § 1, p. 1155.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 329 provided that the act should take effect on and after July 1, 2001.

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Title 11
ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS

Chapter

Chapter 1. Executions, §§ 11-101 — 11-108.
Chapter 2. Property Subject to Execution — Exemptions, §§ 11-201 — 11-207.
Chapter 3. Levy and Sale Under Execution, §§ 11-301 — 11-313.
Chapter 4. Redemptions, §§ 11-401 — 11-407.
Chapter 5. Proceedings Supplementary to Execution, §§ 11-501 — 11-508.
Chapter 6. Exemption of Property From Attachment or Levy, §§ 11-601 — 11-609.
Chapter 7. Garnishments, §§ 11-701 — 11-731.

Chapter 1
EXECUTIONS

Sec.

11-101. Time within which execution may issue — Stay pending disposition of motions.

11-102. Form of writ.

11-103. Time when returnable — Record in execution book — Continuous execution or garnishment for child support.

11-104. Enforcement of judgment by execution.

11-105. Execution after ten years.

11-106. Execution after death.

11-107. Executions directed to sheriff — Executions in different counties at the same time.

11-108. Execution of civil judgments against prisoners.

§ 11-101. Time within which execution may issue — Stay pending disposition of motions. — Except as provided in section 5-245, Idaho Code, for execution on judgments for support of a child and for execution on judgments for restitution to victims of crime, the party in whose favor judgment is given may, at any time within ten (10) years after the entry or order of renewal thereof, have a writ of execution issued for its enforcement, subject to the right of the court to stay execution as provided by the rules adopted by the supreme court. The party in whose favor a judgment for restitution to a victim of crime has been entered pursuant to section 19-5305, Idaho Code, may, at any time within twenty (20) years after the entry thereof, have a writ of execution issued for its enforcement, subject to the right of the court to stay execution as provided by the rules adopted by the supreme court.

History.

C.C.P. 1881, § 430; R.S., R.C., & C.L., § 4470; C.S., § 6910; I.C.A., § 8-101; am. 1941, ch. 24, § 1, p. 48; am. 1995, ch. 264, § 4, p. 846; am. 2010, ch. 34, § 1, p. 65; am. 2015, ch. 139, § 2, p. 343; am. 2015, ch. 278, § 1, p. 1137; am. 2019, ch. 175, § 1, p. 567.

STATUTORY NOTES

Cross References.

Actions on judgment limited to eleven years, § 5-215.

Arbitration awards, enforcement as judgments, § 7-914.

Clerk's fee for issuing execution upon abstract or transcript of judgment and filing same, § 31-3201; for recording such execution, § 31-3201.

Eminent domain proceedings, execution on behalf of defendants, § 7-715; delivery of money to defendant upon his filing satisfaction of judgment, § 7-717.

Inherent powers of courts to compel obedience to their judgments, orders and process, § 1-1603.

Installment payment of judgments, motor vehicle accident cases, § 49-1207.

Life insurance policies, proceeds exempt from creditors' claims, § 41-1833.

Nonjudicial days, executions may be issued on, § 1-1607.

Stay on motion for new trial, Idaho R. Civ. P. 62(b).

Amendments.

The 2010 amendment, by ch. 34, substituted "as provided by the rules adopted by the supreme court" for "as herein provided" at the end, and deleted the former second paragraph which read: "In its discretion and on such conditions for the security of the adverse party or parties as are proper, the court may stay the execution of, or any proceeding to enforce, a judgment pending the disposition of a motion for a new trial made pursuant to section 10-602, Idaho Code, or judgment notwithstanding the verdict made pursuant to sections 10-224 and 10-602, Idaho Code, or a motion for relief from a judgment or order made pursuant to section 5-905, Idaho Code."

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 139, inserted "and for execution on judgments for restitution to victims of crime" in the first sentence and added the last sentence.

The 2015 amendment, by ch. 278, substituted "ten (10) years" for "five (5) years" in the first sentence.

The 2019 amendment, by ch. 175, inserted "or order of renewal" near the middle of the first sentence.

Effective Dates.

Section 6 of S.L. 2015, ch. 278, provided that the act should take effect on and after July 1, 2015, and shall apply only to judgments issued on and after July 1, 2015, by a court of competent jurisdiction.

CASE NOTES

Decisions Under Prior Law

Cloud on title.

Delay issuing execution.

General rule.

Grounds for injunction.

Judgments recovered by united states.

Revivor.

Scire facias.

Cloud on Title.

In mechanic's lien foreclosure, where two judgment claimants assigned their judgments to another judgment claimant and heirs of deceased owner assigned their interest to same assignee so as to cause a merger of the liens with the title, an unassigned recorded judgment of another claimant is a cloud on the title which must be removed to render same marketable. Brown v. Hawkins, 66 Idaho 351, 158 P.2d 840 (1945), overruled on other grounds, Mitchell v. Flandro, 95 Idaho 228, 506 P.2d 455 (1972).

Delay Issuing Execution.

Judgment creditor may delay taking out execution against his debtor, as long as this statute permits him to claim the issuance of execution, without being chargeable with laches or estoppel. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

Failure of judgment creditor to take out an execution against the judgment debtor within the 16 days between the date of his judgment and the date on which the debtor filed his petition in bankruptcy did not preclude the creditor from urging that the debtor's bankruptcy relieved him of the duty of taking out an execution against the debtor as a "condition precedent" to action against the sureties of the bond given to discharge the writ of attachment. Stewart v. Slater, 61 Idaho 628, 105 P.2d 729 (1940).

General Rule.

Under this section, the party in whose favor a judgment is given may at any time within five [now 10] years after the entry thereof have a writ of

execution issued for its enforcement. Bashor v. Beloit, 20 Idaho 592, 119 P. 55 (1911).

Grounds for Injunction.

Execution will not be enjoined on ground of payment, settlement, or discharge of claim, unless judgment debtor was prevented by fraud, circumvention, deceit, or accident from making such defense in the action. Lewis v. Warren & Anderson Furniture Co., 31 Idaho 4, 168 P. 1142 (1917).

Judgments Recovered by United States.

Provision of statute giving judgment creditor right to execution within five [now 10] years of judgment entry was binding, as to limitation period, with respect to judgments recovered by United States. Custer v. McCutcheon, 283 U.S. 514, 51 S. Ct. 530, 75 L. Ed. 1239 (1931).

Revivor.

Revivor under the statute is not a new suit but merely a proceeding in aid of execution. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Scire Facias.

Writ of scire facias has been abolished and this section and § 11-312 now serve its function. Gertztowt v. Humphrey, 53 Idaho 631, 27 P.2d 64 (1933).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 77 et seq.

C.J.S. — 33 C.J.S., Executions, § 61 et seq.

§ 11-102. Form of writ. — The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk, and be directed to the sheriff, and it must intelligently refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money, or currency, the execution must also state the kind of money or currency in which the judgment is payable, and must require the sheriff substantially as follows:

(1) If it be against the property of the judgment debtor, it must require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

(2) If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the sheriff to satisfy the judgment, with interest, out of such property.

(3) If it be against the person of the judgment debtor, it must require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law.

(4) If it be issued on a judgment made payable in a specified kind of money or currency, it must also require the sheriff to satisfy the same in the kind of money or currency in which the judgment is made payable, and the sheriff must refuse payment in any other kind of money or currency; and in case of levy and sale of property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable

on his official bond to the judgment creditor in three (3) times the amount of the money so collected.

(5) If it be for the delivery of the possession of real or personal property, it must require the sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in subsection (1) of this section.

History.

C.C.P. 1881, § 431; R.S., R.C., & C.L., § 4471; C.S., § 6911; I.C.A., § 8-102; am. 2009, ch. 11, § 3, p. 14.

STATUTORY NOTES

Cross References.

Court seal to be affixed to writs, § 1-1616.

Delivery of execution by sheriff to successor on expiration of term of office, § 31-2223.

Discharge of lien of execution on the records after lien has been lost or destroyed, § 8-538.

Liability of sheriff for neglect or refusal to levy, § 31-2206.

Sheriff is justified by and must execute process regular on its face, § 31-2213.

Sheriff must indorse time of reception on process, § 31-2202.

Amendments.

The 2009 amendment, by ch. 11, in the introductory paragraph and in subsection (4), deleted “as provided in section 10-1104” following the first occurrence of “currency”; and in subsection (5), substituted “as provided in subsection (1) of this section” for “as provided in the first subdivision of this section.”

CASE NOTES

Actions of claim and delivery.

Amount stated in judgment.

Costs and interest.

Actions of Claim and Delivery.

Losing party in action of claim and delivery does not have the option of returning or paying for property as he may elect; property must be returned in specie if it can be done and it is only in case it can not be so returned that value thereof can be paid. Johnson v. Fraser, 2 Idaho 404, 18 P. 48 (1888).

Amount Stated in Judgment.

This statutory directive, that a writ of execution identify the judgment and "the amount thereof," implicitly requires that the judgment itself state an amount or set forth the method by which an amount can be ascertained. When there exists no judgment (or supplemental order) satisfying this requirement, a writ of execution cannot be issued in compliance with this section. Operating Eng'rs Local Union 370 v. Goodwin Constr. Co., 104 Idaho 83, 656 P.2d 144 (Ct. App. 1982).

Although the plaintiff unions waived their right to take exception to the memorandum of costs filed by the prevailing defendant employer, it did not follow that the memorandum of costs was deemed approved in its entirety and that a writ of execution could be issued thereon; before a writ of execution could issue on a money judgment, the court, by judgment or supplemental order, must have fixed the amount of recovery; accordingly, where the court neither fixed the amount of costs in the judgment itself nor entered a separate order fixing the amount of costs, a writ of execution for the costs should not have been issued. Operating Eng'rs Local Union 370 v. Goodwin Constr. Co., 104 Idaho 83, 656 P.2d 144 (Ct. App. 1982).

Costs and Interest.

Judgment should include all costs at the date of entry and thereafter bears interest at seven per cent from such date on the full amount of the entire judgment. Bashor v. Beloit, 20 Idaho 592, 119 P. 55 (1911).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 92 et seq.

C.J.S. — 33 C.J.S., Executions, § 93 et seq.

§ 11-103. Time when returnable — Record in execution book — Continuous execution or garnishment for child support. — (a) Except as provided in subsection (b) of this section, the execution may be made returnable at any time not less than ten (10) nor more than sixty (60) days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed. When the execution is returned, the clerk must attach it to the judgment roll. If any real estate be levied upon, the clerk must record the execution and the return thereto at large, and certify the same under his hand as true copies in a book to be called the "execution book," which book must be indexed with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public without charge. It is evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, mutilated or lost.

(b) Where an execution or garnishment against earnings or unemployment benefits for a delinquent child support obligation is served upon any person or upon the state of Idaho and there is in possession of such person or the state of Idaho any such earnings or any unemployment benefits of the judgment debtor, the execution and the garnishment shall operate continuously and shall require such person or the state of Idaho to withhold the nonexempt portion of earnings or unemployment benefits at each succeeding earnings or unemployment benefits disbursement interval until released by the sheriff at the written request of the judgment creditor or until the judgment for child support debt, in the dollar amount specifically set forth on the writ of execution and subject to garnishment as of the date the writ of execution is issued, is discharged or satisfied in full; provided, however, that interim returns on such continuous execution or garnishment shall be filed by the sheriff at intervals not to exceed fourteen (14) days, whenever the amount collected in the fourteen (14) day period is at least equal to fifty dollars ($50.00), but in any event, interim returns on such continuous garnishment shall be filed by the sheriff at intervals not to exceed thirty (30) days. The proportion of earnings subject to garnishment as compared to total available earnings or unemployment benefits shall be

limited to the percentage restrictions on garnishment of wages for child support as provided in section 11-207, Idaho Code.

History.

C.C.P. 1881, § 432; R.S., R.C. & C.L., § 4472; C.S., § 6912; I.C.A., § 8-103; am. 1982, ch. 170, § 1, p. 449; am. 1986, ch. 221, § 12, p. 584.

STATUTORY NOTES

Cross References.

Penalty for failure to return, § 31-2205.

Return is prima facie evidence of facts, § 31-2204.

Return of process by sheriff after expiration of predecessor's term of office, § 31-2225.

CASE NOTES

Levy by recordation.

Mandatory procedure.

Levy by Recordation.

Where a judgment becomes a lien against real property, it is necessary to levy upon the property by recordation of a writ of execution. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

Mandatory Procedure.

Section 8-506 provides a mandatory procedure for levying on real property pursuant to a writ of execution as well as a writ of attachment. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 221 et seq.

C.J.S. — 33 C.J.S., Executions, § 510 et seq.

§ 11-104. Enforcement of judgment by execution. — When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

History.

C.C.P. 1881, § 433; R.S., R.C., & C.L., § 4473; C.S., § 6913; I.C.A., § 8-104.

STATUTORY NOTES

Cross References.

Enforcement of judgments, motor vehicle accident cases, § 49-1201 et seq.

CASE NOTES

Sufficiency of Writ.

Recitals of writ may be amended upon proper showing. Wilson v. Gray, 5 Idaho 218, 47 P. 942 (1897).

Writ which fails to direct proper officers to execute judgment is not void. Wilson v. Gray, 5 Idaho 218, 47 P. 942 (1897).

Cited United States Fid. & Guar. Co. v. Fort Misery Hwy. Dist., 22 F.2d 369 (9th Cir. 1927); Big Lost River Irrigation Co. v. Davidson, 21 Idaho

160, 121 P. 88 (1912); Williams v. Paxton, 98 Idaho 155, 559 P.2d 1123 (1976); Suchan v. Suchan, 113 Idaho 102, 741 P.2d 1289 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 54 et seq.

C.J.S. — 33 C.J.S., Executions, § 7.

§ 11-105. Execution after ten years. — In all cases other than for the recovery of money the judgment may be enforced or carried into execution after the lapse of ten (10) years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings.

History.

C.C.P. 1881, § 434; R.S., R.C., & C.L., § 4474; C.S., § 6914; I.C.A., § 8-105; am. 2015, ch. 278, § 2, p. 1137.

STATUTORY NOTES

Cross References.

Limitation on judgment, § 5-215.

Amendments.

The 2015 amendment, by ch. 278, substituted "ten years" for "five years" in the section heading and substituted "ten (10) years" for "five (5) years" in the text of the section.

Effective Dates.

Section 6 of S.L. 2015, ch. 278, provided that the act should take effect on and after July 1, 2015, and shall apply only to judgments issued on and after July 1, 2015, by a court of competent jurisdiction.

CASE NOTES

Method not exclusive.

Revivor.

Scire facias.

Method not Exclusive.

In abolishing writ of scire facias and enacting a substitute therefor by the provisions of this section, substitute was not intended to be the exclusive

method by which a judgment might be revived or kept alive. Bashor v. Beloit, 20 Idaho 592, 119 P. 55 (1911).

Revivor.

The whole judgment must be revived in entirety against all of the several defendants. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

An action for revivor, under this statute, is not regarded as a new action but a proceeding in aid of an execution on an old judgment. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Where an order of revivor contains no decretal language against a certain judgment debtor, the only inference which can be drawn from such omission is that of payment and consequent presumption of discharge and release. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Scire Facias.

Writ of scire facias is abolished and this section and § 11-312 now serve its function. Gertztowt v. Humphrey, 53 Idaho 631, 27 P.2d 64 (1933).

Cited Estate of Thompson v. Turner, 107 Idaho 470, 690 P.2d 925 (1984); Bankers Life & Cas. Co. v. Gilmore, 141 Bankr. 734 (Bankr. D. Idaho 1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 77 et seq.

§ 11-106. Execution after death. — Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced as follows:

1. In the case of the death of the judgment creditor, upon the application of his executor or administrator or successor in interest.

2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon.

History.

C.C.P. 1881, § 435; R.S., R.C., & C.L., § 4475; C.S., § 6915; I.C.A., § 8-106.

CASE NOTES

Execution issued during lifetime.

Money judgments.

Execution Issued During Lifetime.

Execution issuing during life of judgment creditor does not abate on his death. Hill v. Joseph, 58 Idaho 267, 72 P.2d 283 (1937).

Money Judgments.

A plain money judgment does not fall within purview of this section, and an execution to enforce it can not issue after the death of the judgment debtor. Rose v. Dunbar, 20 Idaho 1, 115 P. 920 (1911).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 51.

C.J.S. — 33 C.J.S., Executions, § 80 et seq.

§ 11-107. Executions directed to sheriff — Executions in different counties at the same time. — Where the execution is against the property of the judgment debtor it may be issued to the sheriff of any county in the state. Where it requires the delivery of real or personal property it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

History.

C.C.P. 1881, § 436; R.S., R.C., & C.L., § 4476; C.S., § 6916; I.C.A., § 8-107.

STATUTORY NOTES

Cross References.

Sale of corporate franchises on execution, § 30-201 et seq.

Sale of homestead on execution, § 55-1101 et seq.

CASE NOTES

Sheriffs' Duty to Enforce and Administer.

County sheriffs were properly named as defendants in a suit challenging the constitutionality of Idaho's postjudgment garnishment procedures because they had the statutory duty to enforce and administer allegedly unconstitutional state statutes. Chaloux v. Killeen, 886 F.2d 247 (9th Cir. 1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 174 et seq.

C.J.S. — 33 C.J.S., Executions, § 232 et seq.

§ 11-108. Execution of civil judgments against prisoners. — (1) For purposes of this section, the county sheriffs and the department of correction are exempt from the requirements of title 8 and title 11, Idaho Code. However, nothing in this section shall prevent the county, county sheriffs or department of correction from pursuing formal execution of judgments through writs of execution under title 11, Idaho Code, or writs of attachment and possession under title 8, Idaho Code.

(2) Whenever a judgment is entered against a prisoner pursuant to section 12-120, 12-121 or 12-122, Idaho Code, the county, county sheriff or department of correction may collect the amount of the judgment from the prisoner by direct levy against the prisoner's inmate account and/or personal property in his possession at the county jail or state prison. In pursuit of such collection efforts, the following applies:

(a) The county, county sheriff or department of correction may continue to levy against the prisoner's inmate account and personal property as it becomes available until the amount of the judgment is fully satisfied;

(b) Funds collected from an inmate account shall be credited in full towards satisfaction of the judgment;

(c) A prisoner's personal property may be sold to the jail or prison commissary as used goods, with the value to be determined by the county sheriff or the department of correction, respectively.

(3) For purposes of this section, prisoners shall not be entitled to claim exempt property under sections 11-201 through 11-207, Idaho Code, or 11-601 through 11-608, Idaho Code, with respect to funds in their inmate accounts and personal property in their possession at a county jail or a state prison.

History.

I.C., § 11-108, as added by 1996, ch. 420, § 1, p. 1398.

CASE NOTES

Constitutionality.

Inmate's constitutional attack on this section was denied because inmate failed to satisfy the requirement of standing, where his constitutional claims were highly theoretical, and he did not allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested would prevent or redress the claimed injury. Freeman v. State, 134 Idaho 481, 4 P.3d 1132 (Ct. App. 2000).

Cited Hyde v. Fisher, 143 Idaho 782, 152 P.3d 653 (Ct. App. 2007).

Idaho Code Ch. 2

Chapter 2
PROPERTY SUBJECT TO EXECUTION — EXEMPTIONS

Sec.

11-201. Property liable to seizure.

11-202. Debts owing by state of Idaho subject to execution or garnishment after judgment. [Repealed.]

11-203. Claim of exemption by defendant or third party claim — Motion to contest claim and hearing — Holding and release of property by sheriff.

11-204. Exemption in favor of married person.

11-205. Exemptions in general. [Repealed.]

11-206. Definitions.

11-207. Restriction on garnishment — Maximum.

Idaho Code § 11-201

§ 11-201. Property liable to seizure. — All goods, chattels, moneys and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law or by court order, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and all other property both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

History.

C.C.P. 1881, § 437; R.S., R.C., & C.L., § 4477; C.S., § 6917; I.C.A., § 8-201; am. 2017, ch. 303, § 4, p. 799.

STATUTORY NOTES

Cross References.

Execution on debts due from state, § 11-202.

Sheriff not required to keep property claimed as exempt unless undertaking given, § 11-203.

Amendments.

The 2017 amendment, by ch. 303, inserted "or by court order" near the middle of the first sentence.

CASE NOTES

Money in custody of court.

Spouses.

Trustee's interest.

Money in Custody of Court.

An execution can not run against money in the custody of the court, since the court has inherent power to control a fund in the hands of its clerk and direct its distribution, and the clerk of the court holding money does not do so as an individual but as an officer of the court and may not be sued therefor. Anderson v. Ferguson, 56 Idaho 554, 57 P.2d 325 (1936).

Spouses.

Where a married man (or woman) has entered into a contract for a community obligation, he has personally obligated himself under the contract, and his judgment creditor under the contract may execute upon the separate property for the satisfaction of a judgment against him. Williams v. Paxton, 98 Idaho 155, 559 P.2d 1123 (1976).

Trustee's Interest.

The general rule is that the trustee's interest in the res of the trust can not be subjected to an execution against such trustee for his individual debt. Cunningham v. Bank of Nampa, 13 Idaho 167, 88 P. 975 (1907).

Cited Eagleson v. Rubin, 16 Idaho 92, 100 P. 765 (1909); The Mode, Ltd. v. Myers, 30 Idaho 159, 164 P. 91 (1917); Meier v. Bruce, 30 Idaho 732, 168 P. 5 (1917); Quirk v. Bedal, 42 Idaho 567, 248 P. 447 (1926); Bothwell v. Keefer, 53 Idaho 658, 27 P.2d 65 (1933); Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984); Suchan v. Suchan, 113 Idaho 102, 741 P.2d 1289 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d., Executions, § 119 et seq.

C.J.S. — 33 C.J.S., Executions, § 27 et seq.

ALR. — Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors. 11 A.L.R.3d 1465.

Allowance of attorneys' fees in civil contempt proceedings. 43 A.L.R.3d 793.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property. 55 A.L.R.3d 911.

§ 11-202. Debts owing by state of Idaho subject to execution or garnishment after judgment. [Repealed.]

Repealed by S.L. 2017, ch. 303, § 5, effective July 1, 2017.

History.

I.C.A., § 8-201A, as added by 1939, ch. 98, § 1, p. 165; am. 1984, ch. 223, § 1, p. 540; am. 1994, ch. 180, § 8, p. 420; am. 2003, ch. 32, § 3, p. 115.

§ 11-203. Claim of exemption by defendant or third party claim — Motion to contest claim and hearing — Holding and release of property by sheriff. — The following procedures shall apply to a claim by the defendant or the defendant's representative that property levied upon is exempt and to any claim by a third party that property levied upon is his property or that he has a security interest therein. The defendant or the defendant's representative shall complete the claim of exemption form as provided in section 11-707, Idaho Code. A third party claimant shall prepare a written claim setting forth the grounds upon which he claims the property, and in the case of a secured party, also stating the dollar amount of the claim. Except as provided in subsection (h) of this section, a claim of exemption or third party claim may be filed only if property has been levied upon.

(a) The claim of exemption or third party claim shall be delivered or mailed to the sheriff within fourteen (14) days after the date the sheriff hand delivers or mails the documents required to be served upon the defendant and third parties under section 11-709, Idaho Code. If the claim is mailed, it must be received by the sheriff within the fourteen (14) day period. In computing the fourteen (14) day period, intervening weekends and legal holidays shall be counted, but if the last day of the period falls on a weekend or legal holiday, the period shall be deemed to run until the close of business of the first business day following the weekend or holiday.

Within one (1) business day after receiving a claim, the sheriff shall deliver or mail a copy thereof to the plaintiff or other person in whose favor the writ of execution runs. The sheriff may provide notification of the claim by telephone but must also mail a copy of the claim within one (1) business day as herein provided.

(b) The plaintiff or other person in whose favor the writ of execution runs shall have five (5) business days after the date a copy of the claim is delivered or mailed to him by the sheriff within which to file a motion with the court stating the grounds upon which he contests the claim of exemption or third party claim. When the motion is filed, the plaintiff shall lodge with the court a copy of the claim to which the motion pertains. Hearing on the

motion shall be set for a date within not less than five (5) nor more than twelve (12) days after the filing date of the motion and may be continued only at the request of the defendant. A copy of the motion and notice of hearing shall be delivered or mailed to the defendant or third party claimant on the date the motion is filed. The prevailing party at the hearing may be awarded costs pursuant to the Idaho rules of civil procedure.

Within the period for filing a motion to contest, the moving party shall notify the sheriff that the motion has been filed. Such notification may be by telephone but a copy of the motion and notice of hearing shall also be mailed or hand delivered to the sheriff within the filing period herein prescribed.

(c) The sheriff shall not deliver to the plaintiff or sell the property levied upon, except if perishable as provided by law, until the period for filing a claim has elapsed. The sheriff shall refuse to accept or honor a claim not filed with him within that period and unless otherwise ordered by the court, shall, after such period has elapsed, proceed to sell or deliver the property levied upon to the plaintiff or other person in whose favor the execution runs. If, after notice from the sheriff of the filing of a claim, the plaintiff or other person in whose favor the execution runs, notifies the sheriff that the claim will be uncontested or fails to notify the sheriff within the time provided in subsection (b) of this section that the claim is being contested, the sheriff shall release the claimed property to the defendant or his agent.

(d) If a plaintiff or other person in whose favor the execution runs has failed to contest a claim of exemption within the time allowed by this section or if property has been determined by a court to be exempt, and the plaintiff or other person in whose favor the execution runs thereafter levies upon or otherwise seeks to apply the property toward the satisfaction of the same money judgment, the plaintiff or other person in whose favor the execution runs is not entitled to recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

(e) If a security agreement to the third party claimant is in default, rendering said claimant the legal right to possession, the claimant may file with the sheriff an affidavit of release to the claimant executed by the defendant-debtor, or his agent; or, in lieu of said affidavit of release, the third party claimant may file an affidavit setting forth the defendant-debtor's

default and claiming possession under default and a hold harmless agreement in favor of the sheriff, supported by an undertaking qualifying in the state of Idaho, indemnifying the sheriff and said defendant-debtor in double the actual value of the property as stated in said third party claim. Upon receipt of either of the foregoing, the sheriff shall release said property to the third party claimant, taking receipt therefor; these proceedings to be reported to the court by sheriff's return in the action.

(f) Nothing in this section shall be construed to prevent the defendant from pursuing his common law remedies.

(g) Personal service shall be accomplished in the same manner provided for service of summons under the Idaho rules of civil procedure. Mailing shall be by first class mail. The date when an item is deposited in the United States mails shall constitute the date of mailing. In computing any period of time prescribed in this section, the day of the act or event after which the designated period of time begins to run is not to be included.

(h) At any time after the entry of a judgment that may be enforced by writ of execution as provided in section 11-104, Idaho Code, the judgment debtor, or any third party who claims a security interest or other interest in the property of the judgment debtor, may move the court for an order of exemption identifying the property for which the exemption is claimed and setting forth the grounds, arising under this title or common law, upon which he claims an exemption or, in the case of a third party, an interest in the property, and in the case of a secured party, also stating the dollar amount of such secured party's claim.

History.

I.C., § 11-203, as added by 1991, ch. 165, § 10, p. 395; am. 2017, ch. 303, § 6, p. 799.

STATUTORY NOTES

Cross References.

Actions against sheriffs, notice to indemnitors, § 12-612.

Claim by third person of property attached, § 8-527.

Prior Laws.

Former § 11-203, which comprised C.C.P. 1881, § 438; R.S. & R.C., § 4478; am. 1913, ch. 71, § 1, p. 125; am. 1969, ch. 462, § 1, p. 1298; am. 1971, ch. 258, § 1, p. 1036, was repealed by S.L. 1991, ch. 165, § 9.

Amendments.

The 2017 amendment, by ch. 303, in the introductory paragraph, substituted "section 11-707, Idaho Code" for "section 8-507C, Idaho Code" at the end of the second sentence and inserted "Except as provided in subsection (h) of this section" at the beginning of the last sentence; substituted "section 11-709, Idaho Code" for "section 8-507A, Idaho Code" at the end of the first sentence in subsection (a); and added subsection (h).

CASE NOTES

Attorney fees.

Compliance.

Constitutionality.

Construction with other laws.

Costs not awarded.

Notice.

Post-judgment attorney fees.

Presumption of lawfulness.

Summary judgment.

Attorney Fees.

Although subsection (b) of this section permits an award of costs, but not attorney's fees, nothing in that paragraph bars an award of attorney's fees under § 12-120. Credit Bureau of E. Idaho, Inc. v. Acedo, 164 Idaho 444, 431 P.3d 279 (Ct. App. 2018).

Compliance.

Perfected security interest survived the secured creditor's failure to comply with this section because the creditor did not forfeit its security interest by virtue of failing to file a third-party claim, and the doctrine of

quasi-estoppel did not bar the creditor from recovering. The security interest extended to the proceeds which a judgment creditor realized from the sheriff's sale of the collateral. Keybank Nat'l Ass'n v. PAL I, LLC, 155 Idaho 287, 311 P.3d 299 (2013).

Constitutionality.

District court's conclusion that a secured creditor maintained its secured interest in collateral, although it failed to comply with this section, did not violate the Equal Protection Clause of U.S. Const., Amend. XIV because judgment debtors and secured parties holding an interest in their property were entirely different classes of people and just because a judgment debtor had to file a claim of exemption to protect the judgment creditor's property rights, it did not follow that a secured party had to do the same. Keybank Nat'l Ass'n v. PAL I, LLC, 155 Idaho 287, 311 P.3d 299 (2013).

Construction with Other Laws.

Since § 11-308 imposes a duty to "deliver" property, but such language is absent in this section, the plain meaning of this section is that the sheriff is required only to "release" the property, not that he is affirmatively required to deliver it to a third party claimant upon release. Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999).

Costs Not Awarded.

Idaho R. Civ. P. 54(d)(1)(F) does not provide for any exceptions for adding sheriff's fees to a judgment, and neither the fees nor the cost of alternative transportation are costs recoverable under subsection (b) of this section. Therefore, although a debtor prevailed on the issue of an exemption, a magistrate judge did not err by adding the cost of serving the writ of execution to a judgment under Idaho R. Civ. P. 54(d)(1)(F), and there was no evidence that this was a second levy precluding the addition of the costs under subsection (d) of this section. Powell v. Powell, 142 Idaho 815, 135 P.3d 761 (2006).

Notice.

Receiving notice of a third party claim for a release of property under this section does not constitute notice of a demand for the return of property for purposes of a conversion claim. Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999).

Principal's company attempted collection by way of levies and executions to which certain exemptions and third-party claim issues arose; the agent asserted the principal failed to file a copy of the claim to which the motion to contest the third-party claim applied. The supreme court determined that the company complied with this section by attaching the claims to an affidavit. VFP VC v. Dakota Co., 141 Idaho 326, 109 P.3d 714 (2005).

Post-judgment Attorney Fees.

District court erred to the extent that it ruled that this section required an assignee to be the prevailing party at a hearing on a client's claim of exemption in order to be awarded fees and costs, and that this section provided the exclusive basis for any award of post-judgment attorney fees. Action Collection Servs. v. Bigham, 146 Idaho 286, 192 P.3d 1110 (Ct. App. 2008).

Presumption of Lawfulness.

A sheriff's possession of property seized pursuant to a validly issued writ of execution is lawful, pending the outcome of proceedings under this section. Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999).

Summary Judgment.

Where the timeliness of the county defendants' actions in releasing property was a material issue in the case, and where it related to a cross-claim by another party and was not put at issue by the plaintiff's summary judgment motion, the magistrate erred in dismissing the county defendants from the action. Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999).

Decisions Under Prior Law

Duties and liabilities of sheriff.

Effect of accepting indemnity bonds.

Right of action.

Sheriff's jury.

Verified claim.

Duties and Liabilities of Sheriff.

This section does not entitle sheriff to keep property levied on after third party claim is filed and institute an interpleader suit to have the rights of claimants determined. The property should be returned to the judgment creditor or turned over to third party claimants. Aker v. Coleman, 60 Idaho 118, 88 P.2d 869 (1939).

In an action for damages against a sheriff and the surety on his official bond, a complaint alleging that the sheriff levied on property under an execution, that third party claims were filed, that the sheriff instituted interpleader proceedings which were determined in favor of the execution plaintiff, and that a goodly portion of the property had slipped from the sheriff's control but not because he considered himself not further bound to keep the property for failure of execution plaintiff to give an indemnity bond, was sufficient as against a general demurrer. Aker v. Coleman, 60 Idaho 118, 88 P.2d 869 (1939).

Effect of Accepting Indemnity Bonds.

Where property levied upon by constable is claimed by stranger, the officer is not bound to proceed further with execution of writ; but when he has demanded and accepted indemnity, he is bound to proceed and rely on his bond in indemnity. Smith v. Graham, 25 Idaho 174, 136 P. 801 (1913); Smith v. Graham, 30 Idaho 132, 164 P. 354 (1917).

Right of Action.

Action for damages for trespass to personal property of plaintiff, namely ousting plaintiff from possession and control of his truck and contents was not an action for wrongful attachment under § 8-503 nor a case in which plaintiff was entitled to appear in the probate court and move for dissolution pursuant to § 8-534, the remedy and rights given by those sections being available only to defendant in the case in which attachment is issued; plaintiff's only remedy was either by way of intervention in the attachment case under former § 5-322 (repealed) or by a third party claim under former § 8-532 (repealed) and this section. Jaquith v. Stanger, 79 Idaho 49, 310 P.2d 805 (1957).

Sheriff's Jury.

Verdict of a sheriff's jury had under this section is merely advisory to the officer and for his protection and is not res judicata. Smith v. Graham, 25 Idaho 174, 136 P. 801 (1913).

Verified Claim.

The purpose of requiring a verified claim from the third party is to assure that the claim meets a minimum threshold of reliability before putting the attaching plaintiff to the burden of indemnifying the sheriff on demand. Slayton v. Zapp, 108 Idaho 244, 697 P.2d 1258 (Ct. App. 1985).

Where the attaching plaintiff never was put to the burden of indemnifying the sheriff because the parties stipulated that the third party could substitute a bond for the value of the automobile to be held by the sheriff in place of the vehicle, the sheriff thus was relieved of any potential liability to the third party for which indemnity would be sought from the attaching plaintiff and the reason for requiring verification did not exist and the provisions of § 8-527 and this section were not applicable; thus, the lack of verification did not bar the subsequent judicial proceeding to determine the third party's claim to the car. Slayton v. Zapp, 108 Idaho 244, 697 P.2d 1258 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d Executions, § 129 et seq.

C.J.S. — 33 C.J.S., Executions, § 328 et seq.

ALR. — Validity, Construction, and Application of State Exemption Statutes for Proceeds of Personal Injury or Wrongful Death Lawsuits. 99 A.L.R.6th 481.

§ 11-204. Exemption in favor of married person. — All real and personal property of any married person at the time of his or her marriage, or which he or she subsequently acquires as separate property, and all noncommunity rents, issues and profits thereof, are exempt from execution for any separate debts incurred by his or her spouse.

History.

I.C., § 11-204, as added by 2011, ch. 86, § 2, p. 182.

STATUTORY NOTES

Cross References.

Manner of claiming exemption, § 11-203.

Wife's control of separate property, § 32-904.

Separate property defined, § 32-903.

Prior Laws.

Former § 11-204, Exemption in favor of married woman, which comprised C.C.P. 1881, § 439; R.S., R.C., & C.L., § 4479; C.S., § 6919; I.C.A., § 8-203, was repealed by S.L. 2011, ch. 86, § 1.

Effective Dates.

Section 3 of S.L. 2011, ch. 86 declared an emergency. Approved March 16, 2011.

CASE NOTES

Constitutionality.

Earnings of wife.

Profits of wife's separate property.

Constitutionality.

Former section is unconstitutional, as it treated husbands and wives unequally. Under this section, the earnings of a wife were exempt from

execution against her husband, but the earnings of a husband were not exempt from execution against his wife. Additionally, the unequal treatment under this section was arbitrary and did not demonstrate a substantial relation to the objective of community property legislation. Credit Bureau of E. Idaho, Inc. v. Lecheminant, 149 Idaho 468, 235 P.3d 1188 (2010) (see 2011 repeal and enactment).

Earnings of Wife.

As to earnings of married woman on account of personal services while she is living with her husband, exemption applies only such earnings as are due and owing; after such earnings have been paid or converted into other property, exemption granted by this section no longer obtains. McMillan v. United States Fire Ins. Co., 48 Idaho 163, 280 P. 220 (1929).

Profits of Wife's Separate Property.

Under the provisions of this section, the increase of a married woman's separate property (in this case consisting of cattle) is exempt from execution against her husband. Bank of Nez Perce v. Pindel, 193 F. 917 (9th Cir. 1912); Thorn v. Anderson, 7 Idaho 421, 63 P. 592 (1900).

Issues and profits arising from investment of separate property of wife are not liable upon execution against her husband. Evans v. Kroutinger, 9 Idaho 153, 72 P. 882 (1903); Humbird Lumber Co. v. Doran, 24 Idaho 507, 135 P. 66 (1913).

Cited Hall v. Johns, 17 Idaho 224, 105 P. 71 (1909); Wilkerson v. Aven, 26 Idaho 559, 144 P. 1105 (1914); Clark v. Utah Constr. Co., 51 Idaho 587, 8 P.2d 454 (1932).

RESEARCH REFERENCES

ALR. — Validity, Construction, and Application of State Exemption Statutes for Proceeds of Personal Injury or Wrongful Death Lawsuits. 99 A.L.R.6th 481.

§ 11-205. Exemptions in general. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 440; R.S., § 4480; am. 1895, p. 85, § 1; reen. 1899, p. 251, § 1; reen. R.C., § 4480; am. 1913, ch. 60, § 1, p. 245; am. 1915, ch. 24, § 1 p. 76; compiled and reen. C.L., § 4480; C.S., § 6920; I.C.A., § 8-204; am. 1933, ch. 97, § 1, p. 154; am. 1937, ch. 104, § 1, p. 154; am. 1970, ch. 11, § 1, p. 18, was repealed by S.L. 1978, ch. 348, § 3. For present law, see §§ 11-601 to 11-608.

§ 11-206. Definitions. — For the purpose of section 11-207, Idaho Code, the term:

1. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

2. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

3. "Garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

History.

I.C., § 11-206, as added by 1970, ch. 11, § 2, p. 18.

CASE NOTES

Earnings.

A debtor who fails to adhere to the requirements imposed on a debtor-in-possession on use of funds and selling of assets, who fails to accurately or timely report financial transactions, who does not disclose transactions of close to a quarter million dollars, who sells assets without code or court approval, who fails to immediately surrender assets and records to the trustee on conversion of the case from Chapter 11 to Chapter 7, and who instead continues to take funds from estate accounts as a chapter 7 debtor without authority, forfeits the ability to credibly argue that the court and creditors should attribute some hypothetically unpaid income to him and qualifies for no restrictions on the garnishment of his funds. In re Hoyle, 2013 Bankr. LEXIS 2640 (Bankr. D. Idaho June 28, 2013).

Cited Bills v. State, Dep't of Revenue & Taxation, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986).

§ 11-207. Restriction on garnishment — Maximum. — (1) Except as provided in subsection (2) of this section, the maximum amount of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment shall not exceed (a) twenty-five per cent (25%) of his disposable earnings for that week, or (b) the amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C.A. 206(a)(1) in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Idaho commissioner of labor shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in (b) of this subsection.

(2)(a) The restrictions of subsection (1) of this section shall not apply in the case of any order of any court for the support of any person, any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act, or any debt due for any state or federal tax.

(b) The maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment to enforce any order for the support of any person shall not exceed:

1. Where such individual is supporting his spouse or dependent child, other than a spouse or child with respect to whose support such order is used, fifty per cent (50%) of such individual's disposable earnings for that week; and

2. Where such individual is not supporting such a spouse or dependent child described in paragraph 1., sixty per cent (60%) of such individual's disposable earnings for that week;

except that with respect to the disposable earnings of any individual for any work week, the fifty per cent (50%) specified in paragraph 1. shall be deemed to be fifty-five per cent (55%) and the sixty per cent (60%) specified in paragraph 2. shall be deemed to be sixty-five per cent (65%), if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the

twelve (12) week period which ends with the beginning of such work week.

History.

I.C., § 11-207, as added by 1970, ch. 11, § 3, p. 18; am. 1982, ch. 170, § 2, p. 449.

STATUTORY NOTES

Federal References.

Chapter XIII of the Bankruptcy Act may be found in 11 U.S.C. § 1301 et seq.

Effective Dates.

Section 4 of S.L. 1970, ch. 11 provided that the act should become effective on the first day of July, 1970.

CASE NOTES

Calculating amount.

Earnings.

Inmate's account.

Worker's compensation benefits.

Calculating Amount.

Where injured worker received a lump sum settlement of worker's compensation benefits, and worker owed child support and arrearages from two previous marriages and support obligations for the care of another child, the district court erred in holding that attorney fees deducted from the lump sum settlement agreement must be added back into the settlement amount before garnishment percentage under this section was taken, for pursuant to § 72-803, claims for attorney fees were subject to approval by the industrial commission (commission) and that as the commission had approved the lump sum agreement in its order and had also approved and awarded the attorney fees, the attorney fees were not part of the lump sum award and were not subject to the provisions of this section. State Dep't of

Health & Welfare ex rel. Lisby v. Lisby, 126 Idaho 776, 890 P.2d 727 (1995).

Earnings.

A debtor who fails to adhere to the requirements imposed on a debtor-in-possession on use of funds and selling of assets, who fails to accurately or timely report financial transactions, who does not disclose transactions of close to a quarter million dollars, who sells assets without code or court approval, who fails to immediately surrender assets and records to the trustee on conversion of the case from Chapter 11 to Chapter 7, and who instead continues to take funds from estate accounts as a chapter 7 debtor without authority, forfeits the ability to credibly argue that the court and creditors should attribute some hypothetically unpaid income to him and qualifies for no restrictions on the garnishment of his funds. In re Hoyle, 2013 Bankr. LEXIS 2640 (Bankr. D. Idaho June 28, 2013).

Debtors' exemption claim for a state tax refund was disallowed because, once the funds were withheld from debtors' earnings and paid to the state, the money belonged to the state, and the debtor was left with only a claim for a refund, meaning that the funds were not "earnings" or "disposable earnings" for purposes of the exemption statute. In re Egbert, 2016 Bankr. LEXIS 3685 (Bankr. D. Idaho Oct. 11, 2016).

Commissions that a debtor received after she declared Chapter 7 bankruptcy, when an insured renewed a policy that the debtor had sold to the insured before she declared bankruptcy, were property of her bankruptcy estate, because the right to receive those commissions existed pre-petition and the debtor was not required to perform personal services postpetition to receive renewal commissions. However, to the extent that the first-year commissions and the first-year advances that the debtor received pre-petition were property of her bankruptcy estate, 75% of those payments were exempt from creditors' claims under this section and the debtor could exempt the balance of those earnings, and part of her renewal commissions, under § 11-605. In re Lott, 2018 Bankr. LEXIS 2126 (Bankr. D. Idaho July 19, 2018).

Inmate's Account.

Although an inmate's account is similar to a bank account into which earnings may have been deposited, if the inmate has made no effort in tracing his alleged wages, which he claims are exempt from garnishment under this section, the funds are commingled; thus, any exemption would fail under § 11-604. Hooper v. State, 127 Idaho 945, 908 P.2d 1252 (Ct. App. 1995).

Worker's Compensation Benefits.

Where injured worker received a lump sum settlement of worker's compensation benefits, and worker owed child support and arrearages from two previous marriages and support obligations for the care of another child, the exemption provision of § 72-802, which exempts all worker's compensation awards from creditors claims did not apply to claims for the enforcement of support orders as § 7-1203 granted the department of health and welfare, bureau of child support enforcement (department) garnishment rights and other remedies against the proceeds of worker's compensation awards. Under former § 7-1204 (now repealed), this section limited garnishment by the department to 55% of the worker's compensation lump sum settlement benefits payable to the injured worker child support obligor. State Dep't of Health & Welfare ex rel. Lisby v. Lisby, 126 Idaho 776, 890 P.2d 727 (1995).

Cited Bills v. State, Dep't of Revenue & Taxation, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d, Attachment and Garnishment, § 1 et seq.

C.J.S. — 33 C.J.S., Executions, § 1 et seq.

Idaho Code Ch. 3

Chapter 3
LEVY AND SALE UNDER EXECUTION

Sec.

11-301. Execution of writ.

11-302. Sale of property — Notice.

11-303. Sale without notice — Penalty.

11-304. Conduct of sale.

11-305. Refusal to pay purchase-money — Resale.

11-306. Refusal to pay purchase-money — Rejection of subsequent bids.

11-307. Limitation of officer's liability.

11-308. Delivery of property to purchaser — Certificate of sale.

11-309. Certificate of sale — Title conveyed.

11-310. Title to real property — Right of redemption — Certificate of sale.

11-311. Execution of deed by successor in office.

11-312. Failure of title — Revival of judgment.

11-313. Contribution between joint debtors.

§ 11-301. Execution of writ. — The sheriff must execute the writ against the property of the judgment debtor by levying on a sufficient amount of property if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

The provisions of sections 11-703, 11-706, 11-707, 11-709 and 11-710, Idaho Code, shall apply to a levy upon personal property.

History.

C.C.P. 1881, § 441; R.S., R.C., & C.L., § 4481; C.S., § 6921; I.C.A., § 8-301; am. 1991, ch. 165, § 12, p. 395; am. 2017, ch. 303, § 7, p. 799.

STATUTORY NOTES

Cross References.

Arbitration awards, enforced as judgments, § 7-914.

Attachment, return of writ, § 8-537; discharge of writ when lien lost, § 8-538.

Attorney's lien for fees, § 3-205.

Civil arrest, return, § 8-115.

Claim and delivery actions, service of papers, § 8-304.

Costs on appeal, enforcement, § 12-114.

Execution for fees, due to officer, § 31-3215.

Forcible entry and unlawful detainer against tenant, delay of execution to permit payment of rent, § 6-316.

Franchise may be levied upon, § 30-201.

Fraternal benefit societies, benefits not subject to seizure under process, § 41-3217.

Imprisonment for debt except in cases of fraud prohibited, Idaho Const., Art. I, § 15.

Judgment against sheriff conclusive as to his right to recover against sureties, § 12-612.

Judgment to be satisfied out of attached property, § 8-528.

Lien to be discharged when writ is lost or destroyed, § 8-538.

Nonjudicial days, executions may be served on, § 1-1607.

Penalty for neglect or refusal of sheriff to pay over money, § 31-2207.

Receiver, appointment to carry judgment into effect, § 8-601.

Satisfaction of judgment, Idaho R. Civ. P. 58(b).

Sheriff must execute each process regular on its face, § 31-2213.

Sheriff must exhibit process, § 31-2214.

Sheriff's commissions for receiving or paying over money on execution, § 31-3203.

Sheriff's fee for levying execution, § 31-3203; for preserving property under execution, § 31-3203; for making return of writ, § 31-3203.

Amendments.

The 2017 amendment, by ch. 303, substituted "sections 11-703, 11-706, 11-707, 11-709 and 11-710, Idaho Code" for "8-507 through 8-507D, Idaho Code" near the end of the last paragraph.

CASE NOTES

Construction of section.

Levy by recordation.

Mandatory procedure.

Release of exempt property.

Construction of Section.

After the execution has issued and been placed in the hands of the sheriff, there is nothing left for the judgment creditor to do and nothing more could have been done whether he be dead or alive. It would be unreasonable to hold that the sheriff must satisfy himself at the time he makes the sale under execution, or at any other times, that the judgment creditor is alive, or that the execution sale would be void if it happened that at the moment of the sale the judgment creditor was dead. Hill v. Joseph, 58 Idaho 267, 72 P.2d 283 (1937).

The holder of a sheriff's certificate of sale is entitled to either the possession of property or to demand rent from the tenant or vendee, as the case may be, in possession, from the date of the sale. In the instant case, appellant was let into possession of the property and was entitled to remain in possession provided he made the payments of the purchase-price in accordance with the terms of his contract. Sherwood v. Daly, 58 Idaho 744, 78 P.2d 357 (1938).

Levy by Recordation.

Where a judgment becomes a lien against real property, it is necessary to levy upon the property by recordation of a writ of execution. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

Mandatory Procedure.

Section 8-506 provides a mandatory procedure for levying on real property pursuant to a writ of execution as well as a writ of attachment. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984), aff'd, 108 Idaho 392, 700 P.2d 14 (1985).

Release of Exempt Property.

After sheriff has returned an execution, he has no authority to release the property levied on, on the ground that it is exempt, but such a release can only be obtained by order of the court. Roth v. Duvall, 1 Idaho 149 (1867).

Where constable seizes property under an attachment, he may sell the attached property under an execution issued on same and directed to the sheriff of the county. Pecotte v. Oliver, 2 Idaho 251, 10 P. 302 (1886).

Cited Gem Valley Ranches, Inc. v. Small, 90 Idaho 354, 411 P.2d 943 (1966); Gem Valley Ranches, Inc. v. Small, 92 Idaho 232, 440 P.2d 352 (1968); Suchan v. Suchan, 113 Idaho 102, 741 P.2d 1289 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 177 et seq.

C.J.S. — 33 C.J.S., Executions, § 131 et seq.

§ 11-302. Sale of property — Notice. — Before the sale of the property on execution, notice thereof must be given as follows:

1. In case of perishable property, by posting a written notice of the time and place of sale in three (3) public places of the precinct or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

2. In case of other personal property, by posting a similar notice in three (3) public places in the precinct or city where the sale is to take place for not less than five (5) nor more than ten (10) days before the time set for the sale, or by publishing a copy thereof at least one (1) week, and not more than two (2) weeks, in a newspaper published in the county, if there be one.

3. In case of real property, by posting a similar notice particularly describing the property, for twenty (20) days, in three (3) public places in the precinct or city where the property is situated, and also where the property is to be sold, and by publishing a copy thereof once a week for the same period before the time set for the sale, in a newspaper published in the county, if there be one. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

History.

C.C.P. 1881, § 442; R.S., § 4482; am. 1895, p. 40, § 1; reen. 1899, p. 243, § 1; am. 1901, p. 156, § 1; am. 1907, p. 30, § 1; reen. R.C., & C.L., § 4482; C.S., § 6922; I.C.A., § 8-302.

STATUTORY NOTES

Cross References.

Attachment, sale of perishable property under writ of, § 8-525; order for sale of property in interest of parties, § 8-526; claim of property by third

person or as exempt, § 8-527; sale of attached property to satisfy judgment, § 8-528.

Liability of sheriff for refusal to pay over money, § 31-2207.

Party in possession of property, injunction against injury while execution sale pending, § 6-407; damages for injury pending conveyance after sale, § 6-408.

Sheriff's fee for advertising property for sale on execution, § 31-3203.

CASE NOTES

Evidence.

Notice of sale.

Evidence.

Sheriff's certificate of sale and sheriff's deed constitute prima facie evidence of the recital contained therein, and where it appears from positive extrinsic evidence that the land was not actually offered for sale or sold at the time and place stated in the notice of sale and as recited in the deed, then such sale is void and the deed ineffective. Terry v. Terry, 70 Idaho 161, 213 P.2d 906 (1950).

Notice of Sale.

Notice of sale of real estate levied upon by execution may be made either by posting notices or by publication, in discretion of sheriff or attorney for execution plaintiff. Ollis v. Kirkpatrick, 3 Idaho 247, 28 P. 435 (1891).

Cited Mechanics & Metals Nat'l Bank v. Pingree, 40 Idaho 118, 232 P. 5 (1924); Aker v. Coleman, 60 Idaho 118, 88 P.2d 869 (1939); Nixon v. Triber, 100 Idaho 198, 595 P.2d 1093 (1979); Tudor Eng'g Co. v. Mouw, 109 Idaho 576, 709 P.2d 146 (1985); County of Kootenai v. Western Cas. & Sur. Co., 113 Idaho 908, 750 P.2d 87 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 249 et seq.

C.J.S. — 33 C.J.S., Executions, § 370 et seq.

§ 11-303. Sale without notice — Penalty. — An officer selling without the notice prescribed by the last section forfeits $500 to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale) forfeits $500.

History.

C.C.P. 1881, § 443; R.S., R.C., & C.L., § 4483; C.S., § 6923; I.C.A., § 8-303.

CASE NOTES

Remedy exclusive.

Sheriff's deed.

Remedy Exclusive.

This section provides the exclusive remedy for failure to comply with the notice provisions of § 11-302. Nixon v. Triber, 100 Idaho 198, 595 P.2d 1093 (1979).

Sheriff's Deed.

Sheriff is statutorily compelled to issue a sheriff's deed once the redemption period has expired, and the issuance of the deed is a mere ministerial act which is in no manner negligent; therefore, sheriff's negligent action in undertaking sale without proper notice on December 17, 1975 was not covered under insurance policy issued May 12, 1976 even though deed was issued June 17, 1976. County of Kootenai v. Western Cas. & Sur. Co., 113 Idaho 908, 750 P.2d 87 (1988).

Idaho Code § 11-304

§ 11-304. Conduct of sale. — All sales of property under execution must be made at auction, to the highest bidder. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser, or be interested in any purchase, at such sale. When the sale is of personal property, capable of manual delivery, it must be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

History.

C.C.P. 1881, § 444; R.S., R.C., & C.L., § 4484; C.S., § 6924; I.C.A., § 8-304; am. 2018, ch. 121, § 1, p. 258.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 121, deleted "between the hours of nine (9:00) in the morning and five (5:00) in the afternoon" from the end of the first sentence and deleted "be within view of those who attend the sale, and" following "it must" near the beginning of the fourth sentence.

CASE NOTES

Direction of judgment debtor.

Foreclosure sales.

Irregularity of sale.

Reasonable sale.

Redemption period.

Sale en masse.

Sale on holiday.

Sale to highest bidder.

Setting aside sale.

Subsequent grantees.

Direction of Judgment Debtor.

Defendant has right to direct the order in which property levied upon shall be sold. Injunction order in a proceeding to which defendant was not a party, and of which he had no notice, directing that property levied upon be sold in an order different from that directed by defendant is void as to defendant and can not deprive him of his statutory right. Wooddy v. Jameson, 5 Idaho 466, 50 P. 1008 (1897).

Judgment debtor, through attorney, being present at sale with right to direct order in which property should be sold, will not afterwards be heard to complain of manner in which it was sold. Coghlan v. City of Boise, 36 Idaho 613, 212 P. 867 (1923).

Where there is more than one judgment debtor and they can not agree, there is no error in sheriff's following directions of one, and, where there is no showing of fraud or illegality, sale will not be set aside. Federal Land Bank v. Wood, 43 Idaho 502, 253 P. 833 (1927).

Foreclosure Sales.

Where decree of foreclosure is silent as to the manner or order in which a sale of real estate shall be conducted, this section governs. Federal Land Bank v. Curts, 45 Idaho 414, 262 P. 877 (1927).

Words "third person" in this section do not include defendant in foreclosure suit, but refer to one not party to suit who acquired title to portion of land subject to judgment. Federal Land Bank v. Curts, 45 Idaho 414, 262 P. 877 (1927).

Irregularity of Sale.

Sale of drilling equipment, some of which was bulky but capable of being moved, was void where property was scattered in surrounding mines and not visible to bidders at the sale, where it was not shown that it was not practicable to gather the property at one or more of the storage points and hold the sale there. Joy Mfg. Co. v. R.S. McClintock Diamond Drilling Co., 77 Idaho 309, 291 P.2d 874 (1955).

Sale of two lots separately at a mortgage foreclosure sale was irregular and not in compliance with this section where house and garage were located on both lots, since it was apparent that both lots were used as one unit or parcel. Gaskill v. Neal, 77 Idaho 428, 293 P.2d 957 (1956).

Irregularity of separate sale of adjoining lots was not cured because one person purchased both lots. Gaskill v. Neal, 77 Idaho 428, 293 P.2d 957 (1956).

Reasonable Sale.

Where, although the land was contiguous, it had been leased out and farmed in several parcels on prior occasions, and the magistrate court found the boundaries of the parcels were established by survey markers as well as farm and county roads, the sale in parcels, even if those parcels were not adapted for separate and distinct enjoyment, was a reasonable means of selling the land profitably. Suchan v. Suchan, 113 Idaho 102, 741 P.2d 1289 (1986).

Redemption Period.

Although the creditor argued that no appellate court had construed the language of § 11-402, governing redemptions, or ruled on whether the sale of the property in separate parcels pursuant to this section necessarily dictated that redemption had to be in like manner for separate parcels, thus invoking a six-month redemption period; the creditor's argument appeared to be premised upon an earlier description of the property as a single tract but, because the property was divided into tracts less than 20 acres, the 6-month redemption period, not the 1-year period for tracts larger than 20 acres, applied. Nez Perce Tribe v. Little Hope Invs., 140 Idaho 219, 91 P.3d 1123 (2004).

Sale En Masse.

Execution sale in a lump of tract of land consisting of three separate lots, any one of which was worth many times amount of bid, should be set aside. Ollis v. Kirkpatrick, 3 Idaho 247, 28 P. 435 (1891).

Question as to whether or not several lots or tracts or parcels of land have been sold together under one bid instead of separately is a question properly to be presented to the court from which execution issued and on motion to set aside sale for irregularity. It can not be raised for the first time on appeal either in same or a collateral proceeding. Foore v. Simon Piano Co., 18 Idaho 167, 108 P. 1038 (1910).

Sale en masse is not prohibited when lots or parcels can not be separately sold. Coghlan v. City of Boise, 36 Idaho 613, 212 P. 867 (1923).

Where land is contiguous and is owned and farmed as one tract, and there are no peculiar marks or circumstances to distinguish one piece from another, it cannot be said, as a matter of law, that it is divided into separate lots or parcels. Federal Land Bank v. Curts, 45 Idaho 414, 262 P. 877 (1927).

Where the evidence indicated that a parcel of land, which was the subject of a foreclosure action, was best utilized as one lot and could not be sold in separate parcels without material injury to the parties, court's order that the property be sold in one parcel did not violate this section. Farm Credit Bank v. Stevenson, 125 Idaho 270, 869 P.2d 1365 (1994).

Sale on Holiday.

An execution sale is a ministerial act rather than "judicial business" as that term is used in § 1-1607, and execution sales conducted on holidays are valid. Ketterer v. Billings, 106 Idaho 832, 683 P.2d 868 (1984).

Sale to Highest Bidder.

Officer, having from appellant a far more advantageous bid than that of purchaser, should have cried the bid and, if no advance was made, sold thereon, or if in doubt as to his duty, should have postponed the sale. Federal Land Bank v. Curts, 45 Idaho 414, 262 P. 877 (1927).

Setting Aside Sale.

Proper remedy to set aside a judicial sale which has been wrongfully made, prior to the execution of the sheriff's deed, is by motion in the

principal action. Notice of the motion should be served upon adverse party and upon purchaser. Wooddy v. Jameson, 5 Idaho 466, 50 P. 1008 (1897).

Sale of separate parcels of realty en masse in disregard of this section is not void but only voidable and may be set aside upon proper and timely application. Coghlan v. City of Boise, 36 Idaho 613, 212 P. 867 (1923).

As a general rule, mere inadequacy of consideration is not sufficient ground for setting aside sheriff's sale, but gross inadequacy coupled with very slight additional circumstances is sufficient. Federal Land Bank v. Curts, 45 Idaho 414, 262 P. 877 (1927).

Sheriff's certificate of sale and sheriff's deed constitute prima facie evidence of the recitals contained therein, and where it appears from positive extrinsic evidence that the land was not actually offered for sale or sold at the time and place stated in the notice of sale and as recited in the deed, then such sale is void and the deed ineffective. Terry v. Terry, 70 Idaho 161, 213 P.2d 906 (1950).

Where first creditor in attachment proceeding obtained an order for sale of personal property, and a second creditor in another proceeding in which debtor and first creditor were parties obtained an order to share in proceeds of sale, the court had jurisdiction in second proceeding to entertain a motion to vacate the sale, since proceedings were interrelated and parties were before the court. Joy Mfg. Co. v. R.S. McClintock Diamond Drilling Co., 77 Idaho 309, 291 P.2d 874 (1955).

Purchase of real estate valued at $11,000 for $426.16 was grossly inadequate and authorized the setting aside of sheriff's sale and certificate of redemption. Gaskill v. Neal, 77 Idaho 428, 293 P.2d 957 (1956).

An execution sale of machines capable of manual delivery should not have been set aside on the ground that the machines were not within view when sold, where the buyer who had made a complete inspection of the machines prior to the sale did not object to the irregularity. Garren v. Butigan, 96 Idaho 906, 539 P.2d 259 (1975).

Subsequent Grantees.

A subsequent grantee of a judgment debtor can not complain on account of the invalidity of an execution sale on the ground that a municipal corporation lacked authority to purchase property at an execution sale in the

name of a trustee, if the sale is otherwise valid. Evans v. Power County, 50 Idaho 690, 1 P.2d 614 (1931).

Cited Nixon v. Triber, 100 Idaho 198, 595 P.2d 1093 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, §§ 404 et seq.

C.J.S. — 33 C.J.S., Executions, § 370 et seq.

§ 11-305. Refusal to pay purchase-money — Resale. — If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

History.

C.C.P. 1881, § 445; R.S., R.C., & C.L., § 4485; C.S., § 6925; I.C.A., § 8-305.

CASE NOTES

Subsequent Grantee.

A subsequent grantee of a judgment debtor can not complain on account of the invalidity of an execution sale on the ground that a municipal corporation lacked authority to purchase property at an execution sale in the name of a trustee, if the sale is otherwise valid. Evans v. Power County, 50 Idaho 690, 1 P.2d 614 (1931).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 426 et seq.

C.J.S. — 33 C.J.S., Executions, § 370 et seq.

§ 11-306. Refusal to pay purchase-money — Rejection of subsequent bids. — When a purchaser refuses to pay the officer may, in his discretion, thereafter reject any subsequent bid of such person.

History.

C.C.P. 1881, § 446; R.S., R.C., & C.L., § 4486; C.S., § 6926; I.C.A., § 8-306.

§ 11-307. Limitation of officer's liability. — The two (2) preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

History.

C.C.P. 1881, § 447; R.S., R.C., & C.L., § 4487; C.S., § 6927; I.C.A., § 8-307.

§ 11-308. Delivery of property to purchaser — Certificate of sale. — When the purchaser of any personal property capable of manual delivery pays the purchase-money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

History.

C.C.P. 1881, § 448; R.S., R.C., & C.L., § 4488; C.S., § 6928; I.C.A., § 8-308.

CASE NOTES

Construction with other laws.

Liability for delivery.

Construction with Other Laws.

Since this section imposes a duty to "deliver" property, but such language is absent in section 11-203, the plain meaning of the latter section is that the sheriff is required only to "release" the property, not that he is affirmatively required to deliver it to a third party claimant upon release. Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999).

Liability for Delivery.

Where a sheriff, who had a duty to safely keep or guard five machines taken into possession pursuant to a writ of execution, did not deliver the machines immediately after an execution sale but left them in an unlocked showroom, the sheriff was liable to the buyer for the machines missing from the showroom. Garren v. Butigan, 96 Idaho 906, 539 P.2d 259 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 437 et seq.

C.J.S. — 33 C.J.S., Executions, § 449 et seq.

§ 11-309. Certificate of sale — Title conveyed. — When the purchaser of any personal property not capable of manual delivery pays the purchase-money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

History.

C.C.P. 1881, § 449; R.S., R.C., & C.L., § 4489; C.S., § 6929; I.C.A., § 8-309.

STATUTORY NOTES

Cross References.

Indexing of sheriff's deeds by county recorder, § 31-2405.

Recording and indexing of certificates of sale, § 31-2406.

CASE NOTES

Passage of title.

Possession of property.

Passage of Title.

Title to real property passes to a foreclosure sale purchaser, under §§ 6-107 and 11-310 and this section, when the purchaser receives the certificate of sale. Indian Springs L.L.C. v. Andersen, 154 Idaho 708, 302 P.3d 333 (2012).

Possession of Property.

Judgment debtors' argument that they were entitled to retain possession of the property subject to judicial foreclosure was rejected where nothing in the redemption statutes mandated that a potential redeeming party was to maintain possession during the redemption period, and, in fact, § 11-406

and this section indicate the opposite is true. PHH Mortg. v. Nickerson, 164 Idaho 33, 423 P.3d 454 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 437 et seq.

C.J.S. — 33 C.J.S., Executions, § 224.

§ 11-310. Title to real property — Right of redemption — Certificate of sale. — Upon a sale of real property the purchaser is substituted to, and acquires all the right, title, interest and claim of the judgment debtor thereto; and all his right, title, interest and claim thereto at any time during any subsisting lien thereon by attachment in the action, or by the docketing of the judgment. When the estate is less than a leasehold of two (2) years' unexpired term, the sale is absolute. In all other cases the property is subject to redemption, as provided in the next chapter. The officer must give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold.

2. The price bid for each distinct lot or parcel.

3. The whole price paid.

4. When subject to redemption, it must be so stated. And when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed for record by the officer in the office of the recorder of the county.

History.

C.C.P. 1881, § 450; R.S., R.C., & C.L., § 4490; C.S., § 6930; I.C.A., § 8-310.

STATUTORY NOTES

Cross References.

Injury to property by tenant in possession, after sale and before possession delivered, damages for, § 6-408.

Injury to real property during foreclosure of mortgage or after sale on execution before a conveyance, injunction against, § 6-407.

Sheriff's fee for executing certificate of sale, § 31-3203.

CASE NOTES

Leasehold.

Prorating rent.

Purchase by creditor.

Redemption.

Title acquired by purchaser.

Trust deeds.

Writ of assistance.

Leasehold.

Execution sale of leasehold interest in land or chattel real is governed by this section. It must be sold as real estate and, if it has more than two (2) years to run, the sale is subject to redemption. Intermountain Realty Co. v. Allen, 60 Idaho 228, 90 P.2d 704 (1939).

Prorating Rent.

The purchaser at execution sale on foreclosure is not entitled to all the crop or rental for the entire year in which the sale is made or the certificate is issued; he must prorate with the judgment debtor for the portion of the year expired prior to the sale. Ferguson v. Sullivan, 58 Idaho 428, 74 P.2d 183 (1937).

Purchase by Creditor.

The doctrine of caveat emptor is, a fortiori, applicable to a judgment creditor who purchases at his own execution sale and merely credits the price bid against his judgment. Boller v. Sun Valley Shamrock Resources, Inc., 119 Idaho 1060, 812 P.2d 1221 (Ct. App. 1993).

Redemption.

Federal court, upon foreclosure of mechanics lien, may decree sale as an entirety and without redemption, notwithstanding state statute allowing redemption. Continental & Com. Trust & Sav. Bank v. Corey Bros. Constr. Co., 208 F. 976 (9th Cir. 1913).

When foreclosure sale is made at which the amount of the debt is bid, sheriff's certificate of sale passes title and the judgment is paid. There no longer exists any indebtedness from mortgagor to mortgagee. The only right remaining in the mortgagor is to divest the purchaser of his title by redemption within one year. Northwestern & Pac. Hypotheekbank v. Nord, 56 Idaho 86, 50 P.2d 4 (1935).

The complaint sufficiently stated a cause of action where former realty owners against whom mortgage had been foreclosed alleged an agreement had been entered into with junior lienholder that latter was to redeem property on last day of redemption period and that former owners were then to secure a purchaser for such realty and personal property located thereon, they to be compensated for such services by the grant of certain parcels of land, but buyer and junior lienholder in violation of such oral agreement consummated the sale depriving former owners of agreed compensation. Harvey v. Brown, 80 Idaho 379, 330 P.2d 982 (1958).

Title Acquired by Purchaser.

Proceedings for enforcement of prior tax lien were without effect after state received sheriff's deed on foreclosure, whether or not the property belonged to the state before expiration of period of redemption and was subject to be listed and assessed under § 63-107. State ex rel. Nash v. Reed, 47 Idaho 131, 272 P. 1008 (1928).

Purchaser at foreclosure sale acquires title to property subject to prior liens and right of redemption. Keel v. Vinyard, 48 Idaho 49, 279 P. 420 (1929).

After sheriff has delivered certificate to purchaser at foreclosure sale, latter is substituted to and acquires all right, title, claim, or interest of judgment debtor, subject to right of redemption within statutory period. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1938).

Title to real property passes to a foreclosure sale purchaser, under §§ 6-107 and 11-309 and this section, when the purchaser receives the certificate of sale. Indian Springs L.L.C. v. Andersen, 154 Idaho 708, 302 P.3d 333 (2012).

Trust Deeds.

The statutory right of redemption, following an execution sale of real property, given by this section and §§ 11-401, 11-402 and following judicial foreclosure of a mortgage, given by § 6-101, is expressly denied to the grantor in a trust deed by § 45-1508 where the sale is made by the trustee by notice and sale, or advertisement and sale, pursuant to the power contained in the deed and the applicable portions of said chapter 15 of title 45. The legislative withdrawal of this legislatively given right of redemption is not a denial of due process, where the withdrawal is affected only in cases where the property owner by his contract so agrees. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210 (1958).

Writ of Assistance.

Writ of assistance is the appropriate remedy to place in possession the purchaser at a foreclosure sale and may issue against all persons bound by the decree. Harding v. Harker, 17 Idaho 341, 105 P. 788 (1909); Williams v. Sherman, 35 Idaho 169, 205 P. 259 (1922); Eagle Rock Corp. v. Idamont Hotel Co., 60 Idaho 639, 95 P.2d 838 (1939).

Cited Evans v. Humphrey, 51 Idaho 268, 5 P.2d 545 (1931).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 358 et seq.

C.J.S. — 33 C.J.S., Executions, §§ 364, 365.

Idaho Code § 11-311

§ 11-311. Execution of deed by successor in office. — When the sheriff who has sold any real estate shall die, resign, be removed from office, or his term of office expire, before executing any good and sufficient deed for such real estate, such deed may be executed by the successor in office of such sheriff with the same effect to all intents and purposes as if made by the sheriff making the sale.

History.

1895, p. 20, § 1; reen. 1899, p. 235, § 1; reen. R.C. & C.L., § 4490a; C.S., § 6931; I.C.A., § 8-311.

Idaho Code § 11-312

§ 11-312. Failure of title — Revival of judgment. — If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof, must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

History.

C.C.P. 1881, § 458; R.S., R.C., & C.L., § 4498; C.S., § 6939; I.C.A., § 8-312.

CASE NOTES

Accrual of right.

Equitable relief.

Judgment creditor bidding in property.

Nature of action.

No revival of judgment.

Order of revivor.

Petition for revival.

Waiver.

Whole judgment revived.

Accrual of Right.

Proceeding to revive a judgment does not accrue, so as to set the statute of limitations in motion, until the period of redemption has expired and the sheriff's deed has been executed. Cantwell v. McPherson, 3 Idaho 721, 34 P. 1095 (1893).

Where defect of title through which purchaser fails to obtain possession consists in cancellation of public land entry under which land was held when it was sold, cause of action for revival of judgment does not arise so as to set the statute of limitations in motion until cancellation of the entry. Cantwell v. McPherson, 3 Idaho 721, 34 P. 1095 (1893).

Equitable Relief.

Suit may be brought for equitable relief independent of this section, and applicable statute of limitations is § 5-224. Gertztowt v. Humphrey, 53 Idaho 631, 27 P.2d 64 (1933).

Judgment Creditor Bidding in Property.

Where a judgment creditor bids in property of the judgment debtor at an execution sale, and credits upon the judgment the amount bid, no valuable consideration passes for such purchase, since it amounts to nothing more than a cancellation pro tanto of a preexisting indebtedness, and such purchase conveys only the legal title to the judgment creditor, subject to existing equities. Mountain Home Lumber Co. v. Swartwout, 30 Idaho 559, 166 P. 271 (1917).

Nature of Action.

An action for revivor, under this statute, is not regarded as a new action but a proceeding in aid of an execution on an old judgment. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

No Revival of Judgment.

There is nothing in this section which permits the revival of a judgment for failure of title. Boller v. Sun Valley Shamrock Resources, Inc., 119 Idaho 1060, 812 P.2d 1221 (Ct. App. 1993).

Order of Revivor.

W, having made entry and final proof on certain lands under federal desert land law, mortgaged same; upon foreclosure of mortgage, assignee of

mortgage became purchaser; prior to foreclosure sale, R had instituted proceedings to contest W's entry; which contest resulted in cancellation of W's entry, the court held that the assignee was entitled to revival of the judgment entered on the foreclosure of the mortgage. Cantwell v. McPherson, 3 Idaho 321, 29 P. 102 (1892).

Where an order of revivor contains no decretal language against a certain judgment debtor, the only inference which can be drawn from such omission is that of payment and consequent presumption of discharge and release. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Petition for Revival.

Petition to revive judgment may be filed where there is an absolute failure of title to land sold at sheriff's sale by reason of cancellation of the entry under which the land was sold, no patent therefor having been issued. Cantwell v. McPherson, 3 Idaho 321, 29 P. 102 (1892).

Waiver.

Failure to file affidavit and motion for revival of judgment is waived if not seasonably objected to. Evans v. Humphrey, 51 Idaho 268, 5 P.2d 545 (1931).

Whole Judgment Revived.

The whole judgment must be revived in entirety against all of the several defendants. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Cited Lewiston Nat'l Bank v. Tefft, 6 Idaho 104, 53 P. 271 (1898); Diamond Bank v. Van Meter, 18 Idaho 243, 108 P. 1042 (1910); Brown v. Hawkins, 66 Idaho 351, 158 P.2d 840 (1945).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 503 et seq.

C.J.S. — 33 C.J.S., Executions, § 488 et seq.

§ 11-313. Contribution between joint debtors. — When upon an execution against several persons more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment, if, within ten (10) days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice the clerk must make an entry thereof in the margin of the docket.

History.

C.C.P. 1881, § 459; R.S., R.C., & C.L., § 4499; C.S., § 6940; I.C.A., § 8-313.

CASE NOTES

Application.

Lien of revived judgment.

Procedure.

Application.

Provisions of this statute are cumulative, but not exclusive, to compel contribution. Dunn v. Stufflebeam, 17 Idaho 559, 106 P. 1129 (1910).

This section has no application to action between cosureties for contribution. Shattuck v. Ellis, 49 Idaho 330, 288 P. 162 (1930).

Lien of Revived Judgment.

The unpaid portion of the original judgment not being a lien against the land sold under it during a period of redemption, revival of such portion of

the deficiency as had in the interim been improvidently satisfied was not a lien. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Procedure.

In proceedings between joint judgment debtors, where one seeks to compel the other to pay proportionate share of the judgment and applies to the court for an order directing an execution to issue, the court may enter such an order but it has no authority to enter a judgment against judgment debtor for the proportionate part of the judgment he should pay. Dunn v. Stufflebeam, 17 Idaho 559, 106 P. 1129 (1910).

Chapter 4
REDEMPTIONS

Sec.

11-401. Redemption — Persons entitled to make.

11-402. Redemption — How made.

11-403. Subsequent redemptions.

11-404. Payment of redemption money.

11-405. Service of papers by redemptioner.

11-406. Restraint of waste pending expiration of redemption period.

11-407. Right to rents and profits after sale.

§ 11-401. Redemption — Persons entitled to make. — Property sold subject to redemption, as provided in section 11-310[, Idaho Code], or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property.

2. A creditor having a lien by judgment or mortgage on the property sold, or some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

History.

C.C.P. 1881, § 451; R.S., R.C., & C.L., § 4491; C.S., § 6932; I.C.A., § 8-401.

STATUTORY NOTES

Cross References.

Foreclosure sales subject to redemption, § 6-101.

Injury pending conveyance after sale, damages, § 6-408.

Compiler's Notes.

The bracketed insertion in the introductory paragraph was added by the compiler to conform to the statutory citation style.

CASE NOTES

Judgment creditor.

Junior mortgagee.

Possession of lien or mortgage required.

Quitclaim deed insufficient.

Redemption requirements.

Redemptioner.

Rights of owner.

Simultaneous foreclosure.

Stockholder's right of redemption.

Tender of redemption.

Trust deeds.

Judgment Creditor.

A judgment creditor does not have a "right" of redemption under § 11-402, since this section grants that right only to the judgment debtor and any junior lien creditor. Phillips v. Blazier-Henry, 154 Idaho 724, 302 P.3d 349 (2013).

Junior Mortgagee.

By the very definition of redemptioner, only a junior mortgagee having a mortgage subsequent to that lien for which the property was foreclosed can redeem. Eastern Idaho Prod. Credit Ass'n v. Placerton, Inc., 100 Idaho 863, 606 P.2d 967 (1980).

Possession of Lien or Mortgage Required.

Under this section, the right to redeem is contingent upon possession of a lien or mortgage; it cannot exist without the mortgage and cannot be transferred independently therefrom. Hieb v. Mitchell, 117 Idaho 1075, 793 P.2d 1247 (1990).

Quitclaim Deed Insufficient.

A quitclaim deed which the FHA executed to defendants did not transfer the redemption rights because the quitclaim deed did not assign the underlying note and mortgage. Hieb v. Mitchell, 117 Idaho 1075, 793 P.2d 1247 (1990).

Redemption Requirements.

The possession of a judgment lien does not excuse a creditor from complying with the mandates of the redemption statutes. Jenkins v. Barsalou, 145 Idaho 202, 177 P.3d 949 (2008).

Redemptioner.

Where the partition order identified the award as a "down payment" and "balance," and the proceedings below consistently referred to the judgment creditor's interest as "a" lien or "the" money judgment, the judgment creditor had only one lien, the one which she executed, and she had no liens separate from or subsequent to the liens she executed upon; therefore, she was not a redemptioner under subsection (2) of this section. Suchan v. Suchan, 113 Idaho 102, 741 P.2d 1289 (1986).

Section 11-403, which delineates the requirements to effect a subsequent redemption, reinforces this section's definition that a redemptioner is one having a lien or mortgage. Hieb v. Mitchell, 117 Idaho 1075, 793 P.2d 1247 (1990).

Rights of Owner.

Where property is sold under execution, the owner still retains conditional interest subject to levy and sale under subsequent executions. Evans v. Humphrey, 51 Idaho 268, 5 P.2d 545 (1931).

Simultaneous Foreclosure.

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right and each would receive a deficiency to the extent his or her debt was not satisfied, with appropriate credit being given for the reasonable value of the security. First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986).

Stockholder's Right of Redemption.

In order to establish a stockholder's right to redeem corporate property from an execution sale, an individual stockholder must show that he first made a bona fide effort to have a redemption made by the directors of the corporation and, failing that, made a like effort with the stockholders as a body, or if he seeks to excuse his own default in that direction, he must show that such efforts to induce a redemption by the directors or stockholders would be an idle ceremony. Wunderlich v. Coeur d'Alene Vulcan Mining Co., 40 Idaho 173, 232 P. 588 (1924).

A stockholder attempting a redemption of corporate property without having taken the substantial course prescribed by law is not entitled to attorney's fees or other expenses incident to an attempted redemption from the execution sale against the corporation. Wunderlich v. Coeur d'Alene Vulcan Mining Co., 40 Idaho 173, 232 P. 588 (1924).

Tender of Redemption.

Purchaser at foreclosure sale refusing to accept lawful tender money does so at his own risk, and his refusal will not prevent the legal effect of the tender to defeat the sale and to extinguish the purchaser's interest in the mortgage lien. Kelley v. Clark, 23 Idaho 1, 129 P. 921 (1912).

Even if redemption by assignees of foreclosure purchaser was found to be defective, title would vest in purchaser after expiration of redemption period. Title would not vest in successors to mortgagors who failed to follow statutory procedure in making attempted redemption. Frisby v. Clapier, 122 Idaho 364, 834 P.2d 881 (Ct. App. 1992).

Trust Deeds.

The statutory right of redemption, following an execution sale of real property, given by this section and §§ 11-310, 11-402 and following judicial foreclosure of a mortgage, given by § 6-101, is expressly denied to the grantor in a trust deed by § 45-1508 where the sale is made by the trustee by notice and sale, or advertisement and sale, pursuant to the power contained in the deed and the applicable portions of said chapter 15 of title 45. The legislative withdrawal of this legislatively given right of redemption is not a denial of due process, where the withdrawal is effected only in cases where the property owner by his contract so agrees. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210 (1958).

Cited Hewitt v. Walters, 21 Idaho 1, 119 P. 705 (1911); Gem Valley Ranches, Inc. v. Small, 90 Idaho 354, 411 P.2d 943 (1966); Gem Valley Ranches, Inc. v. Small, 92 Idaho 232, 440 P.2d 352 (1968); Acker v. Mader, 94 Idaho 94, 481 P.2d 605 (1971); Bonner Bldg. Supply, Inc. v. Standard Forest Prods., Inc., 106 Idaho 682, 682 P.2d 635 (Ct. App. 1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 358 et seq.

C.J.S. — 33 C.J.S., Executions, § 433 et seq.

Idaho Code § 11-402

§ 11-402. Redemption — How made. — The judgment debtor or redemptioner may redeem the property from the purchaser within one (1) year after the sale, if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale if the real property sold consisted of a tract of land of twenty (20) acres or less, on paying the purchaser the amount of his purchase with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code, from the date of sale to the date of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the commencement of the action and which are not included in the judgment, and interest at the rate allowed in section 28-22-104(1), Idaho Code, on such amount; and, if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest at the rate allowed in section 28-22-104(1), Idaho Code; provided, in mortgage foreclosure proceedings, the amount necessary to redeem the property sold under execution shall not include any sum for attorney's fees greater than the fee actually paid by the judgment creditor or which the judgment creditor has by written instrument become unconditionally obligated to pay to his attorney for prosecuting his claim to judgment; and provided, further, the amount of such fee shall be proven by affidavits of the attorney who has received and the person who has paid the fee or by other competent evidence to be presented to the sheriff for his guidance in carrying out the provisions of law relating to redemption; and, provided further, that such redemptioner shall not be required to pay any attorney's fees unless such fees shall have been paid within six (6) months after the sheriff's certificate of sale shall have issued, or within such time the judgment creditor has become unconditionally obligated by written instrument to pay such fees.

History.

C.C.P. 1881, § 452; R.S., § 4492; am. 1895, p. 34, § 1; reen. 1899, p. 241, § 1; reen. R.C. & C.L., § 4492; C.S., § 6933; I.C.A., § 8-402; am. 1937, ch. 64, § 3, p. 85; am. 1967, ch. 293, § 1, p. 825; am. 1970, ch. 100, § 1, p. 250; am. 1982, ch. 322, § 1, p. 795.

CASE NOTES

Amount for redemption.

Attorney's fees.

Certificate of redemption.

Construction in general.

Effect of redemption.

Foreclosures under federal law.

Judgment creditor.

Lien.

Redemption taxes.

Simultaneous foreclosure.

Time for redemption.

Trust deeds.

Unsatisfied judgment not a lien.

Amount for Redemption.

In computing amount necessary to redeem land from foreclosure, payments by purchaser at foreclosure sale of prior mortgages do not constitute "prior lien" within meaning of this section. Keel v. Vinyard, 48 Idaho 49, 279 P. 420 (1929).

Attorney's Fees.

Where property was sold under a foreclosure to mortgagees under judgment of foreclosure from which the mortgagors appealed but gave no undertaking to stay execution, and the foreclosure judgment was modified on appeal by eliminating the attorney's fee, the mortgagors were protected from loss upon redemption by statute providing that the mortgagors need not include the attorney's fee in the amount necessary to redeem, unless the provisions of the statute, as amended in 1935, were complied with. Eagle Rock Corp. v. Idamont Hotel Co., 60 Idaho 639, 95 P.2d 838 (1939).

This section does not apply to attorney's fees allowed in amended order to show cause why the redemption period should not be extended, which fixed a new sum to be paid in redemption and which fees were only for fees incurred by the plaintiff-mortgagee subsequent to plaintiff's motion for conveyance. Gem Valley Ranches, Inc. v. Small, 92 Idaho 232, 440 P.2d 352 (1968).

Purchaser of foreclosed property was not entitled to receive attorney's fees because the purchaser was not a judgment creditor, and a prior contrary determination by a special master was merely persuasive and not binding. Riley v. W. R. Holdings, LLC, 143 Idaho 116, 138 P.3d 316 (2006).

Certificate of Redemption.

Upon redemption by debtor, person to whom payment is made must execute and deliver to him certificate of redemption which should be recorded. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928).

Construction in General.

Amendment of this section which extends period of redemption from six months to one year does not apply to mortgages executed prior to its passage, but as to such mortgages only six months is allowed for redemption. Wilder v. Campbell, 4 Idaho 695, 43 P. 677 (1896).

Where property is sold under execution, the owner still retains conditional interest subject to levy and sale under subsequent executions. Evans v. Humphrey, 51 Idaho 268, 5 P.2d 545 (1931).

Where foreclosure sale is made at which the amount of the debt is bid, sheriff's certificate of sale passes title and the judgment is paid and there no longer exists any indebtedness from mortgagor to mortgagee; the only right remaining in the mortgagor is to divest the purchaser of his title by redemption within one year. Northwestern & Pac. Hypotheekbank v. Nord, 56 Idaho 86, 50 P.2d 4 (1935); Sherwood v. Daly, 58 Idaho 744, 78 P.2d 357 (1938).

The holder of a sheriff's certificate of sale is entitled to either the possession of property or to demand rent from the tenant or vendee, as the case may be, in possession, from the date of the sale. In the instant case, appellant was let into possession of the property and was entitled to remain in possession provided he made the payments of the purchase price in

accordance with the terms of his contract. Sherwood v. Daly, 58 Idaho 744, 78 P.2d 357 (1938).

Absent some valid claim to equitable relief from the requirements of the redemption statute, a party purporting to redeem who does not comply with the statute loses the right to redeem and the title vests absolutely in the purchaser. Williams v. McCallum, 128 Idaho 637, 917 P.2d 794 (1996).

Effect of Redemption.

Redemption of mortgaged premises and recording of certificate thereof nullifies effect of sale and leaves legal title to land same as if foreclosure had not been had. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928).

A redemption when made is not from the mortgage lien but from the execution sale, and a deed subsequently given by the sheriff passes no additional title, but rather evidences that the purchaser's title has not been divested by redemption. Northwestern & Pac. Hypotheekbank v. Nord, 56 Idaho 86, 50 P.2d 4 (1935).

Foreclosures Under Federal Law.

This section does not apply to redemption from a foreclosure under the National Housing Act, 12 USCS § 1701 et seq. Clark Inv. Co. v. United States, 364 F.2d 7 (9th Cir. 1966).

Judgment Creditor.

A judgment creditor does not have a "right" of redemption under this section, since § 11-401 grants that right only to the judgment debtor and any junior lien creditor. Phillips v. Blazier-Henry, 154 Idaho 724, 302 P.3d 349 (2013).

Lien.

One acquiring title before the expiration of the period of redemption from the judgment debtor, by making a redemption from the original sale, took the land freed from the lien of the original judgment under which it was sold. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Redemption Taxes.

Where a purchaser at foreclosure sale has paid taxes on the property after the sale and issuance of sheriff's certificate, a mortgagor, who sought to redeem, was required to include the taxes so paid in the amount necessary to redeem. Eagle Rock Corp. v. Idamont Hotel Co., 60 Idaho 639, 95 P.2d 838 (1939).

Where assignee of first priority lien failed to pay the additional taxes paid by or on behalf of foreclosure sale purchaser of property within the one year time limit provided, his redemption of property was invalid. Williams v. McCallum, 128 Idaho 637, 917 P.2d 794 (1996).

Simultaneous Foreclosure.

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right, and each would receive a deficiency to the extent his debt was not satisfied, with appropriate credit being given for the reasonable value of the security. First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986).

Time for Redemption.

Statutory right to redeem must be exercised within period provided by statute; otherwise, right to redeem is lost and absolute title vests in purchaser. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928).

When the statutory right of redemption has been lost, the court may, upon proper bill showing fraud, mistake, or other circumstances appealing to its equitable discretion, relieve debtor whose property has been sold through failure to redeem in statutory time. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928).

Although the creditor argued that no appellate court had construed the language of § 11-402, governing redemptions or ruled on whether the sale of the property in separate parcels pursuant to § 11-304 necessarily dictated that redemption had to be in like manner for separate parcels, thus invoking a six-month redemption period; the creditor's argument appeared to be premised upon an earlier description of the property as a single tract but, because the property was divided into tracts less than 20 acres, the 6-month

redemption period, not the 1-year period for tracts larger than 20 acres, applied. Nez Perce Tribe v. Little Hope Invs., 140 Idaho 219, 91 P.3d 1123 (2004).

Trust Deeds.

The statutory right of redemption following an execution sale of real property, given by §§ 11-310, 11-401, and this section and following judicial foreclosure of a mortgage, given by § 6-101, is expressly denied to the grantor in a trust deed by § 45-1508 where the sale is made by the trustee by notice and sale, or advertisement and sale, pursuant to the power contained in the deed and the applicable portions of said chapter 15 of title 45. The legislative withdrawal of this legislatively given right of redemption is not a denial of due process, where the withdrawal is effected only in cases where the property owner by his contract so agrees. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210 (1958).

Unsatisfied Judgment Not a Lien.

If any part of the original several judgment remains unsatisfied after the first sale of land, the unsatisfied portion does not become a lien against the judgment debtor's interest in the premises during the period of redemption. Evans v. City of Am. Falls, 52 Idaho 7, 11 P.2d 363 (1932).

Cited Kelley v. Clark, 23 Idaho 1, 129 P. 921 (1912); Benting v. Spanbauer, 58 Idaho 44, 69 P.2d 983 (1937); Panhandle Growers Union v. Scott, 58 Idaho 70, 70 P.2d 372 (1937); Acker v. Mader, 94 Idaho 94, 481 P.2d 605 (1971); Ellis v. Butterfield, 98 Idaho 644, 570 P.2d 1334 (1977); PHH Mortg. v. Nickerson, 164 Idaho 33, 423 P.3d 454 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 358 et seq.

C.J.S. — 33 C.J.S., Executions, § 433 et seq.

Idaho Code § 11-403

§ 11-403. Subsequent redemptions. — If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemption and within one (1) year after the sale, if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale if the real property sold consisted of a tract of land of twenty (20) acres or less, again redeem it from the last redemptioner on paying the sum paid on such last redemption with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code, in addition from the date of the last redemption and the amount of any assessment or taxes which the last redemptioner may have paid thereon, after the redemption by him with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code, on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code; but the judgment under which the property was sold need not be so paid as a lien.

The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty (60) days after the last redemption and within one (1) year after the sale, if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale if the real property sold consisted of a tract of land twenty (20) acres or less, on paying the sum paid on the last previous redemption with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code, in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest thereon at the rate allowed in section 28-22-104(1), Idaho Code.

Written notice of redemption must be given to the sheriff and a duplicate filed for record with the recorder of the county; and, if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the recorder, and if such

notice be not filed, the property may be redeemed without paying such tax, assessment or lien.

If no redemption be made within one (1) year after the sale, if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale if the real property sold consisted of a tract of land of twenty (20) acres or less, the purchaser or his assignee is entitled to a conveyance, or, if so redeemed, whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereon given, the time for redemption by a redemptioner has expired, and the last redemptioner or his assignee is entitled to a sheriff's deed at the expiration of one (1) year after the sale, if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale if the real property sold consisted of a tract of land of twenty (20) acres or less; but in all cases the judgment debtor shall have the entire period of one (1) year from the date of the sale to redeem the property if the real property sold consisted of a tract of land of more than twenty (20) acres and shall have the entire period of six (6) months from the date of sale to redeem the property if the real property sold consisted of a tract of land of twenty (20) acres or less.

If the judgment debtor redeem he must make the same payments as are required to effect a redemption by a redemptioner.

If a debtor redeem, the effect of the sale is terminated and he is restored to his estate.

Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property.

Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of sale.

History.

C.C.P. 1881, § 453; R.S., § 4493; am. 1895, p. 34, § 1; reen. 1899, p. 241, § 1; reen. R.C. & C.L., § 4493; C.S., § 6934; I.C.A., § 8-403; am. 1935, ch.

7, § 2, p. 19; am. 1967, ch. 293, § 2, p. 825; am. 1967 (1st E.S.), ch. 2, § 1, p. 9; am. 1970, ch. 100, § 2, p. 250; am. 1982, ch. 322, § 2, p. 795.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 1967, ch. 293, read: "Nothing provided for in this act shall affect the redemption period of any mortgage executed and recorded on or before the effective date of this act."

Section 2 of S.L. 1967 (E.S.), ch. 2 read: "Nothing herein contained shall affect the redemption period of any mortgage executed and recorded on or before the effective date of this act."

Effective Dates.

Section 3 of S.L. 1967 (E.S.), ch. 2 declared an emergency. Approved July 1, 1967.

Section 3 of S.L. 1982, ch. 322 declared an emergency. Approved April 1, 1982.

CASE NOTES

Application.

Construction for foreclosure decree.

Forfeiture of growing crops.

Redemption period.

Redemptioner.

Sheriff's deed.

Simultaneous foreclosure.

Application.

Under this section, the sheriff, upon execution of a sheriff's deed, is dealing with the rights and title of the judgment debtor, and this section only authorizes him to execute the deed in favor of the holder of the

certificate of sale or a redemptioner; execution of the deed to any other person has no effect. Petty v. Petty, 70 Idaho 473, 223 P.2d 158 (1950).

Construction for Foreclosure Decree.

A mortgage foreclosure decree, providing that the purchaser of mortgaged premises at the foreclosure sale should be let into possession thereof and should have possession on production of sheriff's deed, conformed to the statute relating to redemption of realty from mortgage foreclosure sale, and can not reasonably be construed to mean that the mortgagee or any other purchaser at such sale was to have possession of the mortgaged property prior to one year from the date of sale or before the issuance of the sheriff's deed. Eastern Idaho Loan & Trust Co. v. Blomberg, 62 Idaho 497, 113 P.2d 406 (1940).

Forfeiture of Growing Crops.

Nothing in this section indicates that being restored to one's estate upon redemption requires forfeiture of any growing crops by the person who grew them. First State Bank of Eldorado v. Rowe, 142 Idaho 608, 130 P.3d 1146 (2006).

Redemption Period.

When realty is sold to satisfy a judgment, and the sheriff executes and delivers a certificate of sale, title passes from the judgment debtor to the judgment creditor, only the right of redemption remains, and it must be redeemed within the statutory period. Petty v. Petty, 70 Idaho 473, 223 P.2d 158 (1950).

After expiration of the period of redemption the sheriff's deed merely recites that no redemption has been made, that the time for redemption has expired, and the certificate of sale is incorporated in the deed. Petty v. Petty, 70 Idaho 473, 223 P.2d 158 (1950).

Redemptioner.

This section, which delineates the requirements to effect a subsequent redemption, reinforces § 11-401's definition that a redemptioner is one having a lien or mortgage. Hieb v. Mitchell, 117 Idaho 1075, 793 P.2d 1247 (1990).

Debtors were not required to comply with the mandates of this section in attempting to redeem their property because they were not redemptioners. Riley v. W. R. Holdings, LLC, 143 Idaho 116, 138 P.3d 316 (2006).

Sheriff's Deed.

Sheriff's deed following certificate of sale, not in consequence of any fraud, but solely because of failure to redeem within statutory time, is valid irrespective of purchaser's alleged misconduct to debtor's prejudice. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928).

Where the recitals in the sheriff's deed designated A as "guardian ad litem of B" and B was named as purchaser in the sheriff's bill of sale, it was held that A took title in her representative capacity and the words "guardian ad litem of B" were not merely "descriptive personae." Petty v. Petty, 70 Idaho 473, 223 P.2d 158 (1950).

The sheriff is statutorily compelled to issue a sheriff's deed once the redemption period has expired, and the issuance of the deed is a mere ministerial act. County of Kootenai v. Western Cas. & Sur. Co., 113 Idaho 908, 750 P.2d 87 (1988).

Simultaneous Foreclosure.

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right, and each would receive a deficiency to the extent his or her debt was not satisfied, with appropriate credit being given for the reasonable value of the security. First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053 (Ct. App. 1986).

Cited Keel v. Vinyard, 48 Idaho 49, 279 P. 420 (1929); Acker v. Mader, 94 Idaho 94, 481 P.2d 605 (1971); Federal Land Bank v. Parsons, 118 Idaho 324, 796 P.2d 533 (Ct. App. 1990).

RESEARCH REFERENCES

C.J.S. — 33 C.J.S., Executions, § 433 et seq.

§ 11-404. Payment of redemption money. — The payments mentioned in the last two (2) sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale, or to his successor in office. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

History.

C.C.P. 1881, § 454; R.S.& R.C., § 4494; am. 1911, ch. 88, § 1, p. 334; reen. C.L., § 4494; C.S., § 6935; I.C.A., § 8-404.

CASE NOTES

Amount of payment.

Record owner of certificate.

Refusal to accept tender.

Tender of redemption.

Amount of Payment.

In computing amount necessary to redeem land from foreclosure, payments by purchaser at foreclosure sale of prior mortgages do not constitute "prior lien," within meaning of § 11-402. Keel v. Vinyard, 48 Idaho 49, 279 P. 420 (1929).

Record Owner of Certificate.

It is not the duty of redemptioner to search over the county in an effort to unearth a possible hidden purchaser from the record owner of the certificate of sale, but redemptioner had the right to presume, there being nothing to indicate to the contrary, that the record owner of the certificate continued to own it, and that when it paid him, a redemption of the property was effected. Panhandle Growers Union v. Scott, 58 Idaho 70, 70 P.2d 372 (1937).

Refusal to Accept Tender.

If, within the proper time, mortgagor or his assigns make a bona fide tender of the amount necessary to redeem after foreclosure, purchaser, if he rejects, acts at his peril, since the tender is not required to be kept alive, being equivalent to payment, which discharges the lien; still, if the rejection is reconsidered within a few hours, equity would suggest that purchaser be allowed to accept the tender. Kelley v. Clark, 23 Idaho 1, 129 P. 921 (1912).

Tender of Redemption.

Where defendants tendered a "Fractional Reserve Note" which was ambiguous on its face and had no apparent value, no lawful redemption or tender of redemption was made by defendants. Federal Land Bank v. Parsons, 118 Idaho 324, 796 P.2d 533 (Ct. App. 1990).

Where creditor failed to tender redemption money to the sheriff or to the other creditors, the creditor failed to meet the statutory requirement of tender. Creditor's deposit of money to the clerk of court did not excuse this requirement, because at the time there was no action taking place and the creditor did not have leave of the court to deposit the money. Jenkins v. Barsalou, 145 Idaho 202, 177 P.3d 949 (2008).

Cited Acker v. Mader, 94 Idaho 94, 481 P.2d 605 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 358 et seq.

C.J.S. — 33 C.J.S., Executions, § 439.

§ 11-405. Service of papers by redemptioner. — A redemptioner must produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or recorder of the county where the judgment is docketed or filed, or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder.

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto.

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

History.

C.C.P. 1881, § 455; R.S., R.C., & C.L., § 4495; C.S., § 6936; I.C.A., § 8-405.

CASE NOTES

Cited Acker v. Mader, 94 Idaho 94, 481 P.2d 605 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 358 et seq.

C.J.S. — 33 C.J.S., Executions, § 437 et seq.

§ 11-406. Restraint of waste pending expiration of redemption period. — Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

History.

C.C.P. 1881, § 456; R.S., R.C., & C.L., § 4496; C.S., § 6937; I.C.A., § 8-406.

STATUTORY NOTES

Cross References.

Injunction to prevent injury to real property pending foreclosure, § 6-407.

Waste, actions for, § 6-201 et seq.

CASE NOTES

Possession of property.

Prorating rents.

Purchaser's rights.

Possession of Property.

Judgment debtors' argument that they were entitled to retain possession of the property subject to judicial foreclosure was rejected where nothing in the redemption statutes mandated that a potential redeeming party was to maintain possession during the redemption period, and, in fact, § 11-309

and this section indicate the opposite is true. PHH Mortg. v. Nickerson, 164 Idaho 33, 423 P.3d 454 (2018).

Prorating Rents.

The purchaser at execution sale on foreclosure is not entitled to all the crop or rental for the entire year in which the sale is made or the certificate is issued; he must prorate with the judgment debtor for the portion of the year expired prior to the sale. Ferguson v. Sullivan, 58 Idaho 428, 74 P.2d 183 (1937).

Purchaser's Rights.

Purchaser of real estate sold under execution does not acquire title, and is not entitled to possession, until time for redemption has expired. Cantwell v. McPherson, 3 Idaho 721, 34 P. 1095 (1893).

Cited Northwestern & Pac. Hypotheekbank v. Dalton, 44 Idaho 120, 256 P. 93 (1927).

§ 11-407. Right to rents and profits after sale. — The purchaser, from the time of the sale until a redemption, and a redemptioner from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser, or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five (5) days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one (1) month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within sixty (60) days after such demand, bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen (15) days from and after the final determination of such action the right of redemption is extended to such redemptioner or debtor.

History.

C.C.P. 1881, § 457; R.S., R.C., & C.L., § 4497; C.S., § 6938; am. 1921, ch. 169, § 1, p. 364; I.C.A., § 8-407.

CASE NOTES

Interest retained by owner.

Mortgagee purchasing property.

Mortgagor’s rights.

Offset.

Purchaser’s rights in general.

Interest Retained by Owner.

Where property is sold under execution, owner still retains conditional interest subject to levy and sale under subsequent executions. Evans v. Humphrey, 51 Idaho 268, 5 P.2d 545 (1931).

Mortgagee Purchasing Property.

Where mortgagee purchases property, sold by order of bankruptcy court, for full amount due thereon, he is entitled only to rents accruing between date of sale and date of receiving deed and taking possession. Little v. Wells, 29 F.2d 1003 (D. Idaho 1928).

Mortgagor's Rights.

During the period of redemption, the mortgagor must pay the purchaser as the owner of the land for its use and occupation; after the sale the title is in the purchaser; redemption merely revives the mortgagor's title and the statute gives him his due by providing that the rents paid apply on the redemption; the mortgagor is a "tenant in possession" within the meaning of this section. Caldwell v. Thiessen, 60 Idaho 515, 92 P.2d 1047 (1939).

The only right remaining in the mortgagor after foreclosure sale is the right to redeem. Eagle Rock Corp. v. Idamont Hotel Co., 60 Idaho 639, 95 P.2d 838 (1939).

Except as provided in this section, the mortgagor has no further rights in the mortgaged property after foreclosure sale until he has redeemed the property or tendered the amount required for redemption. Gem Valley Ranches, Inc. v. Small, 92 Idaho 232, 440 P.2d 352 (1968).

Offset.

In the absence of a demand in writing by assignee of first priority lien for written and verified statement of rents and profits, which would have extended the period of redemption for five days after a sworn statement from foreclosure sale purchaser of such rents and profits, there was no basis to consider an offset of deficiency in redemption money paid by assignee. Williams v. McCallum, 128 Idaho 637, 917 P.2d 794 (1996).

Purchaser's Rights in General.

Purchaser is entitled to receive rents of property sold or the value of the use and occupation thereof from time of sale until a redemption of the

property. Northwestern & Pac. Hypotheekbank v. Dalton, 44 Idaho 120, 256 P. 93 (1927).

If no redemption is made, the value of the use and occupation must follow the holder of the legal title, namely, the purchaser. Caldwell v. Thiessen, 60 Idaho 515, 92 P.2d 1047 (1939).

A purchaser of property at a foreclosure sale was entitled to demand and receive the rents from the mortgagor-tenants, and failure of the tenants to pay the rent entitled the purchasers to institute an action to recover the rents due or to remove the tenants from the property. Acker v. Mader, 94 Idaho 94, 481 P.2d 605 (1971).

Cited Hansen v. Sweet, 108 Idaho 785, 702 P.2d 823 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 358 et seq.

C.J.S. — 33 C.J.S., Executions, §§ 506, 507.

Idaho Code Ch. 5

Chapter 5
PROCEEDINGS SUPPLEMENTARY TO EXECUTION

Sec.

11-501. Order for examination of defendant.

11-502. Proceedings to compel appearance.

11-503. Defendant's debtor may satisfy execution.

11-504. Examination of defendant's debtors.

11-505. Witnesses required to appear.

11-506. Application of judgment debtor's property to satisfaction of execution.

11-507. Proceedings against defendant's debtor.

11-508. Disobedience of orders a contempt.

§ 11-501. Order for examination of defendant. — When an execution against property of the judgment debtor or of any of several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he do [does] not reside in this state, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the judge of the court requiring such judgment debtor to appear and answer upon oath concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a judge or referee out of the county in which he resides.

History.

C.C.P. 1881, § 460; R.S., R.C., & C.L., § 4504; C.S., § 6941; I.C.A., § 8-501.

STATUTORY NOTES

Cross References.

Attachment writ returned unsatisfied, procedure, § 8-530.

Receiver, appointment in and of execution, § 8-601 et seq.

Compiler's Notes.

The bracketed word "does" was inserted by the compiler.

CASE NOTES

Cited Spaulding v. Coeur d'Alene Ry. & Nav. Co., 6 Idaho 638, 59 P. 426 (1899); Boise Butcher Co. v. Anixdale, 26 Idaho 483, 144 P. 337 (1914); Smith v. Smith, 136 Idaho 120, 29 P.3d 956 (Ct. App. 2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 615 et seq.

C.J.S. — 33 C.J.S., Executions, § 553 et seq.

§ 11-502. Proceedings to compel appearance. — After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer upon oath concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

History.

C.C.P. 1881, § 461; R.S., R.C., & C.L., § 4505; C.S., § 6942; I.C.A., § 8-502.

STATUTORY NOTES

Cross References.

Civil arrest, § 8-101 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 615 et seq.

C.J.S. — 33 C.J.S., Executions, § 565 et seq.

§ 11-503. Defendant's debtor may satisfy execution. — After the issuing of an execution against property and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount so paid.

History.

C.C.P. 1881, § 462; R.S., R.C., & C.L., § 4506; C.S., § 6943; I.C.A., § 8-503.

STATUTORY NOTES

Cross References.

Garnishment proceedings, § 8-507 et seq.

CASE NOTES

Notice of Assignment.

Timely notice of assignment must be given to judgment debtor to hold him liable on judgment. Houtz v. Daniels, 36 Idaho 544, 211 P. 1088 (1922).

Party having paid judgment, without notice of assignment, and obtained sheriff's receipt therefor, judgment is satisfied. Houtz v. Daniels, 36 Idaho 544, 211 P. 1088 (1922).

Notice of assignment need not be in any particular form, but is sufficient if it advises judgment debtor that person who recovered judgment is no longer owner of it or entitled to collect it. Houtz v. Daniels, 36 Idaho 544, 211 P. 1088 (1922).

After notice to debtor of bona fide assignment of judgment, rights of assignee will be protected from any and all acts of original parties. Houtz v. Daniels, 36 Idaho 544, 211 P. 1088 (1922).

Where all that appeared was that assignment was filed with county recorder, such filing can not operate as constructive notice in absence of

statute providing that it shall have that effect. Houtz v. Daniels, 36 Idaho 544, 211 P. 1088 (1922).

§ 11-504. Examination of defendant's debtors. — After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment, or upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has money or property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars ($50.00), the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

History.

C.C.P. 1881, § 463; R.S., R.C., & C.L., § 4507; C.S., § 6944; I.C.A., § 8-504.

STATUTORY NOTES

Cross References.

Trial by masters, Idaho R. Civ. P. 53(d)(1).

CASE NOTES

Discovery.

Idaho Code title 11 provides an alternate, but not exclusive, avenue by which a judgment creditor may conduct discovery after a judgment has been entered. The civil rules of discovery, including a motion to compel, are also available. Wechsler v. Wechsler, 162 Idaho 900, 407 P.3d 214 (2017).

Cited Spaulding v. Coeur d'Alene Ry. & Nav. Co., 6 Idaho 638, 59 P. 426 (1899); Whitehead v. Van Leuven, 347 F. Supp. 505 (D. Idaho 1972); Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 615 et seq.

C.J.S. — 33 C.J.S., Executions, §§ 551, 552.

§ 11-505. Witnesses required to appear. — Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter in the same manner as upon the trial of an issue.

History.

C.C.P. 1881, § 464; R.S., R.C., & C.L., § 4508; C.S., § 6945; I.C.A., § 8-505.

STATUTORY NOTES

Cross References.

Subpoenas, Idaho Civil Procedure Rules 45(a) through 45(i).

CASE NOTES

Cited Whitehead v. Van Leuven, 347 F. Supp. 505 (D. Idaho 1972); Spaulding v. Coeur d'Alene Ry. & Nav. Co., 6 Idaho 638, 59 P. 426 (1899); Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d., Executions, § 613.

C.J.S. — 33 C.J.S., Executions, §§ 581, 582.

§ 11-506. Application of judgment debtor's property to satisfaction of execution. — The judge or referee may order any money or property of a judgment debtor not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment.

History.

C.C.P. 1881, § 465; R.S., R.C., & C.L., § 4509; C.S., § 6946; I.C.A. § 8-506.

CASE NOTES

Cited Spaulding v. Coeur d'Alene Ry. & Nav. Co., 6 Idaho 638, 59 P. 426 (1899); Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955); Whitehead v. Van Leuven, 347 F. Supp. 505 (D. Idaho 1972).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 636 et seq.

C.J.S. — 33 C.J.S., Executions, § 587 et seq.

§ 11-507. Proceedings against defendant's debtor. — If it appears that a person or corporation, alleged to have money or property of the judgment debtor, or to be indebted to him, claims an interest in the money or property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

History.

C.C.P. 1881, § 466; R.S., R.C., & C.L., § 4510; C.S., § 6947; I.C.A., § 8-507.

STATUTORY NOTES

Cross References.

Garnishment proceedings, § 8-507.

CASE NOTES

Action authorized by court.

Creditor's bill.

Jurisdiction.

Proof of interest.

Supplemental proceedings.

Action Authorized by Court.

Where it is claimed a person has money or property of a judgment debtor, or is indebted to him, and such person denies the debt, or possession of money or property of the judgment debtor, the court may only authorize, by

order made to that effect, the judgment creditor to institute an action against any such person for the recovery of the debt. Mewes v. Jacobson, 17 Idaho 427, 220 P.2d 681 (1950).

The provisions and procedures contemplated by this section are applicable to a cause of action belonging to judgment debtors against their insurance carriers based on wrongful refusal by carriers to settle claims against judgment debtors within policy limits, which cause arises from the contractual obligation of the carriers and is a thing in action arising out of violation of an obligation and, thus, assignable under §§ 5-302 and 55-402. Whitehead v. Van Leuven, 347 F. Supp. 505 (D. Idaho 1972).

Creditor's Bill.

Judgment creditor may maintain a creditor's bill to reach property in hands of a third person where such third person claims an interest in the property under a bill of sale from judgment debtor, so that supplementary proceedings under this section would be ineffectual. Gordon v. Lemp, 7 Idaho 677, 65 P. 444 (1901).

Jurisdiction.

Where an indebtedness is denied or disputed, a district court is without jurisdiction to render or enter judgment in proceeding supplementary to execution. Mewes v. Jacobson, 70 Idaho 427, 220 P.2d 681 (1950).

Proof of Interest.

In an action to foreclose mortgage, where only evidence of defendant's alleged interest in resort property was the self-serving testimony in defendant's deposition, and where defendant made no effort to appear and assert his claim, the trial court's findings that defendant's judgment creditors had proved that defendant owned an interest in the disputed property and that plaintiff had agreed to pay him for such interest were not supported by substantial evidence. Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc., 97 Idaho 572, 548 P.2d 72 (1976).

Supplemental Proceedings.

In proceedings supplemental to execution by judgment creditors in a justice of peace court wherein judgment creditors summoned in third party relative to certain property allegedly belonging to judgment debtor and in

the possession of the third party, and the third party claimed the property belonged to it, the justice did not abuse his discretion by continuing the hearing and ordering the third party to bring in books and records; hence district court had no right to issue writ of prohibition restraining further action by justice. Hubbard v. Morse, 76 Idaho 494, 285 P.2d 483 (1955).

Cited Simpson v. Remington, 6 Idaho 681, 59 P. 360 (1899).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d., Executions, § 636 et seq.

C.J.S. — 33 C.J.S., Executions, § 587 et seq.

§ 11-508. Disobedience of orders a contempt. — If any person, party or witness disobey an order of the referee properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

History.

C.C.P. 1881, § 467; R.S., R.C., & C.L., § 4511; C.S., § 6948; I.C.A., § 8-508.

CASE NOTES

Procedure.

Proceedings against garnishee.

Procedure.

Complaint on a judgment brought against a person alleged to have money of judgment debtor in her possession, under the authority of the order provided for in this section, which substantially shows that the judgment was rendered by a court of competent jurisdiction, its date, amount, and the parties thereto, and then alleges facts showing that proper proceedings under the provisions of this article providing for proceedings supplementary to execution had been taken, that the order provided for in this section had been duly obtained, and further alleges that defendant has money belonging to judgment creditor subject to execution in her possession, is sufficient when tested by a general demurrer. Boise Butcher Co. v. Anixdale, 26 Idaho 483, 144 P. 337 (1914).

Proceedings Against Garnishee.

Where garnishee claims an interest in property adverse to judgment debtor, court may authorize judgment creditor to institute an action for the recovery of such interest, but can not entertain a hearing on the issue involved, proceed to determine same and appoint a receiver to take charge of the property and subject it to the satisfaction of the judgment. Spaulding v. Coeur d'Alene Ry. & Nav. Co., 6 Idaho 638, 59 P. 426 (1899).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 636 et seq.

Idaho Code Ch. 6

Chapter 6
EXEMPTION OF PROPERTY FROM ATTACHMENT OR LEVY

Sec.

11-601. Definitions.

11-602. Protection of property of residents and nonresidents.

11-603. Property exempt without limitation.

11-604. Property exempt to extent reasonably necessary for support.

11-604A. Pension money exempt.

11-605. Exemptions of personal property and disposable earnings subject to value limitations.

11-606. Tracing exempt property.

11-607. Claims enforceable against exempt property.

11-608. Claim of exemption.

11-609. Nonauthorization of federal bankruptcy exemptions.

Idaho Code § 11-601

§ 11-601. Definitions. — As used in this act, unless the context otherwise requires:

(1) "Individual" means a natural person and not an artificial person such as a corporation, partnership, or other entity created by law.

(2) "Dependent" means an individual who derives support primarily from another individual.

History.

I.C., § 11-601, as added by 1978, ch. 348, § 1, p. 909.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1978, ch. 348, which is compiled as §§ 11-601 to 11-604 and 11-605 to 11-608.

CASE NOTES

Construction.

Estoppel to claim exemption.

Construction.

While exemption statutes are to be liberally construed, such construction should be reasonable. McMillan v. United States Fire Ins. Co., 48 Idaho 163, 280 P. 220 (1929).

Estoppel to Claim Exemption.

Fact that a debtor disclaims ownership of property at time of the levy of an attachment thereon does not estop him to afterward claim the property as exempt, where he did not advise, consent, or agree in any way to the levy and did not mislead the officer or prevent him from making a levy. Coey v. Cleghorn, 10 Idaho 166, 79 P. 72 (1904).

RESEARCH REFERENCES

ALR. — Family allowance from decedent's estate as exempt from attachment, garnishment, execution, and foreclosure. 27 A.L.R.3d 863.

What is "necessary" furniture entitled to exemption from seizure for debt. 41 A.L.R.3d 607.

Exemption of parsonage or residence of minister, priest, rabbi, or other church personnel. 55 A.L.R.3d 356.

Property of educational body as extending to property used by personnel as living quarters. 55 A.L.R.3d 485.

§ 11-602. Protection of property of residents and nonresidents. — (1) Residents of this state are entitled to the exemptions provided by this act. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(2) The term "resident" means an individual who intends to maintain his home in this state.

History.

I.C., § 11-602, as added by 1978, ch. 348, § 1, p. 909.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1978, ch. 348, which is compiled as §§ 11-601 to 11-604 and 11-605 to 11-608.

CASE NOTES

Residents Defined.

Person living with his family on Indian reservation within the state, although a trespasser thereon, is nevertheless a resident of the state and entitled to the benefit of the exemption laws. Coey v. Cleghorn, 10 Idaho 166, 79 P. 72 (1904).

RESEARCH REFERENCES

ALR. — Construction and Application of State Exemptions for Health Aids. 100 A.L.R.6th 251.

§ 11-603. Property exempt without limitation. — An individual is entitled to exemption of the following property:

(1) A burial plot for the individual and his family;

(2) Health aids reasonably necessary to enable the individual or a dependent to work or to sustain health; (3) Benefits the individual is entitled to receive under federal social security, or veteran's benefits, except the restrictions under this subsection shall not apply to enforcement of an order for the support of any person by execution, garnishment, or wage withholding under chapter 12, title 7, Idaho Code; (4) Benefits the individual is entitled to receive under federal, state, or local public assistance legislation; (5) Benefits payable for medical, surgical, or hospital care and the amount in a medical savings account as that term is defined in section 63-3022K, Idaho Code; (6) State unemployment compensation to the extent provided for in section 72-1375, Idaho Code.

History.

I.C., § 11-603, as added by 1978, ch. 348, § 1, p. 909; am. 1982, ch. 326, § 1, p. 807; am. 1985, ch. 159, § 7, p. 417; am. 1986, ch. 221, § 3, p. 584; am. 2009, ch. 121, § 1, p. 386.

STATUTORY NOTES

Cross References.

Homestead exemption, § 55-1001 et seq.

Amendments.

The 2009 amendment, by ch. 121, added "and the amount in a medical savings account as that term is defined in section 63-3022K, Idaho Code" in subsection (5).

CASE NOTES

Child tax credit.

Economic stimulus check.

Federal earned income credit exempt.

Grocery credit not exempt.

Health aids.

Hope credit.

Social security benefits.

Workers' compensation benefits.

Child Tax Credit.

While the child tax credit may have been viewed by Congress as good and necessary social policy, it was designed so as to benefit a large percentage of Americans, including taxpayers with incomes up to $110,000 per year, but was not adopted with a legislative purpose of public assistance within the contemplation or reach of subsection (4). In re Dever, 250 B.R. 701 (Bankr. D. Idaho 2000).

Tax refunds paid to a debtor attributable to the federal additional child tax credit (ACTC), 26 USCS § 24, may be exempted by debtors, as benefits received under public assistance legislation, under this section. In re Farnsworth, 558 B.R. 375 (Bankr. D. Idaho 2016).

Economic Stimulus Check.

Payments that the Chapter 7 debtors received as part of an economic stimulus refund because the debtors had filed a 2007 federal income tax return and met certain income eligibility requirements was not in the nature of public assistance and could not be claimed as exempt. In re Wooldridge, 393 B.R. 721 (Bankr. D. Idaho 2008).

Federal Earned Income Credit Exempt.

The federal earned income credit as described in 26 U.S.C.S. § 32 is, due to its nature as social welfare relief, exempt property pursuant to subdivision (4) of this section. In re Jones, 107 Bankr. 751 (Bankr. D. Idaho 1989).

Money debtors had in a credit union account on the day they declared Chapter 7 bankruptcy could be reasonably traced to an Earned Income Credit ("EIC") in the amount of $3,990 they received two weeks before

they declared bankruptcy, and it did not lose its status as exempt property because the debtors placed the funds in the same account that held a Child Tax Credit ("CTC") and a state tax refund. Although the CTC was not exempt from creditors' claims under this section, the EIC and the CTC were already commingled before the debtors deposited the funds because both credits were paid in one transfer the debtors received from the U.S. government. In re Matsuura, 2013 Bankr. LEXIS 5264 (Bankr. D. Idaho Dec. 16, 2013).

Grocery Credit Not Exempt.

The grocery credit as described in former § 63-3024A is not a form of social welfare legislation intended to provide people with the very means by which to live; it is an income tax deduction intended to replace sales taxes paid for food; therefore, the credit is property of the estate and is not subject to exemption. In re Jones, 107 Bankr. 751 (Bankr. D. Idaho 1989).

Health Aids.

Deposits in health savings account on the date of the bankruptcy petition were not exempt as a health aid, which likely refer to a tangible object, such as a wheelchair or a walker, utilized by an individual to sustain his health or to enable himself to work. In re Stanger, 385 B.R. 758 (Bankr. D. Idaho 2008).

Hope Credit.

The Hope credit, provided by 26 U.S.C.S. § 25A, is not an earned income credit that can be properly described as "public assistance legislation," and is not exempt under subsection (4). The Hope credit was intended to encourage taxpayers' education generally; it was not intended to help the poor. In re Crampton, 249 B.R. 215 (Bankr. D. Idaho 2000).

Social Security Benefits.

Chapter 7 trustee did not meet his burden under Fed. R. Bankr. P. 4003 of proving that a debtor acted in bad faith when she failed to timely amend her schedules to show that she received an award of Social Security Disability Insurance ("SSDI") benefits shortly after she declared bankruptcy, such that her claim that the award was exempt from creditors' claims under subsection (3) should be denied. Although the benefits were part of the debtor's bankruptcy estate pursuant to 11 U.S.C.S. § 541 and the debtor was

required under 11 U.S.C.S. § 522 to list them in her schedules, the debtor thought that she did not have to list the award to claim the exemption because her attorney had told her that SSDI benefits were exempt, and she amended her schedules shortly after she learned that she misunderstood her obligations. In re Varney, 449 B.R. 411 (Bankr. D. Idaho 2011).

Workers' Compensation Benefits.

Where injured worker received a lump sum settlement of workers' compensation benefits, and worker owed child support and arrearages from two previous marriages and support obligations for the care of another child, this section provided that an individual was entitled to exemption for benefits payable for medical care and that nothing in this section limited the exemption to past or present medical benefits, the lump sum agreement which designated and awarded medical benefits to worker obligor exempted the medical benefits from garnishment under this section. State Dep't of Health & Welfare ex rel. Lisby v. Lisby, 126 Idaho 776, 890 P.2d 727 (1995).

Cited Idaho Falls Consol. Hosps. v. Board of Comm'rs, 109 Idaho 881, 712 P.2d 582 (1985); University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs, 116 Idaho 434, 776 P.2d 443 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 119 et seq.

ALR. — Construction and Application of State Exemptions for Health Aids. 100 A.L.R.6th 251.

C.J.S. — 33 C.J.S., Executions, § 27 et seq.

§ 11-604. Property exempt to extent reasonably necessary for support. — (1) An individual is entitled to exemption of the following property to the extent reasonably necessary for the support of him and his dependents:

(a) benefits paid or payable by reason of disability or illness; (b) money or personal property received, and rights to receive money or personal property for alimony, support, or separate maintenance; (c) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent; and (d) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured.

(2) The phrase "property to the extent reasonably necessary for the support of him and his dependents" means property required to meet the present and anticipated needs of the individual and his dependents, as determined by the court after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.

History.

I.C., § 11-604, as added by 1978, ch. 348, § 1, p. 909; am. 1982, ch. 326, § 2, p. 807; am. 1996, ch. 309, § 1, p. 1014; am. 2017, ch. 303, § 8, p. 799.

STATUTORY NOTES

Cross References.

Homestead exemption, § 55-1001 et seq.

Amendments.

The 2017 amendment, by ch. 303, deleted former subsection (3), which read: "The exemptions allowed by this section shall be lost immediately upon the commingling of any of the funds or amounts described in this section with any other funds".

Effective Dates.

Section 13 of S.L. 1982, ch. 326 provided that the act should take effect on September 26, 1982.

CASE NOTES

Alimony.

Annuity.

Bodily injury award.

Commingling.

Dependents.

Health savings account.

Life insurance.

Retirement benefits.

Right to payment of money.

Alimony.

Debtor's delay in claiming exemption in alimony payments did not prejudice the trustee, estate or creditors, and based on the divorcing parties' intent that the alimony was for debtor's support and not part of the property settlement, court overruled trustee's objection to the exemption. In re Rogers, 349 B.R. 667 (Bankr. D. Idaho 2005).

Trustee failed to meet his burden under Fed. R. Bankr. P. 4003(c) of proving that a Chapter 7 debtor improperly claimed an alimony exemption under subsection (1) of this section where (1) the payments were received under an agreement that labeled the payments alimony; (2) the significant disparity between the parties' relative incomes indicated that the debtor required support; and (3) the entire sum was reasonably necessary for the debtor's support when she filed her petition, and the entire sum would be reasonably necessary in the future, as the debtor would be a full-time college student for several years and would have student loans to repay when she graduated. In re Grimmett, 2010 Bankr. LEXIS 968 (Bankr. D. Idaho Mar. 24, 2010).

Annuity.

Because debtors did not show that the wife was a dependent of her former spouse, they could not exempt annuity payments under paragraph (1)(c). However, the annuity payments were exempt under § 41-1836, but debtors were held to the statutory cap of $1,250 per month because their income was likely to exceed their expenses. In re Baldwin, 2012 Bankr. LEXIS 5376 (Bankr. D. Idaho Nov. 13, 2012).

Because debtors did not show that the wife was a dependent of her former spouse, they could not exempt annuity payments under paragraph (1)(c). However, the annuity payments were exempt under § 41-1836, but debtors were held to the statutory cap of $1,250 per month because their income was likely to exceed their expenses. In re Baldwin, 2012 Bankr. LEXIS 5376 (Bankr. D. Idaho Nov. 13, 2012).

Bodily Injury Award.

The term "bodily injury," as it appears in the personal bodily injury exemption statute, refers to an actual physical injury, not to pain and suffering consisting only of mental and emotional trauma. In re Hanson, 226 Bankr. 106 (Bankr. D. Idaho 1998).

Bankruptcy court treated a Chapter 7 debtor's motion to set aside the court's order sustaining a creditor's objection to the debtor's claim that the first $25,000 of any recovery she received in a personal injury action that she filed in state court was exempt from creditors' claims as a motion seeking relief due to excusable neglect, and it granted the motion. Idaho law allowed the debtor to shield damages she was awarded for bodily injury up to a maximum of $25,000, there was only a minimal delay between the date the court entered its order and the date the debtor filed her motion, and it would have been unfair to penalize the debtor because her attorney failed to respond when the creditor objected to the debtor's claim. In re Becker, 393 B.R. 233 (Bankr. D. Idaho 2008).

Commingling.

Although an inmate's account is similar to a bank account into which earnings may have been deposited, if the inmate has made no effort in tracing his alleged wages, which he claims are exempt from garnishment under § 11-207, the funds are commingled; thus, any exemption would fail

under this section. Hooper v. State, 127 Idaho 945, 908 P.2d 1252 (Ct. App. 1995) (see 2017 amendment).

Prior to the 2017 amendment of this section, the exemption allowed by this section was lost immediately upon the commingling of any of the funds or amounts described in this section with any other funds. Hopkins v. Bridger (In re Bridger), 2017 Bankr. LEXIS 2459 (Bankr. D. Idaho Aug. 30, 2017).

Dependents.

The exemption in paragraph (1)(c) benefits not only the current dependents of the deceased, but also any former dependents. As the parties had stipulated that debtor was, albeit long ago, a dependent of the decedent; the court found that the requirement that debtor "was or is" a dependent of the decedent, her mother, was met. In re Duran, 2017 Bankr. LEXIS 1813 (Bankr. D. Idaho June 26, 2017).

Health Savings Account.

Deposits in health savings account on the date of the bankruptcy petition were not exempt as benefits paid or payable by reason of disability or illness. In re Stanger, 385 B.R. 758 (Bankr. D. Idaho 2008).

Life Insurance.

Contention of debtors that because the children's lives were insured by life insurance policies, the policies belonged to the children and not the estate failed since there was no evidence that such policies actually belonged to the debtors' children and the children did not have the right to designate the policy beneficiaries or to "cash out" the policies, as both of these rights belonged to the debtors; thus, insurance policies were non-exempt property of the estate. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994).

Retirement Benefits.

Benefits paid or payable by means of disability or illness are exempt from execution or attachment to the extent reasonably necessary for the support of the debtor and his dependents. However, retirement benefits, payable by reason of disability coupled with length of service, are not

accorded the same protection. Desfosses v. Desfosses, 120 Idaho 27, 813 P.2d 366 (Ct. App. 1991).

While the benefits of early retirement incentive program of school district were not a pension or an annuity, it was a "similar plan" that provided retirement benefits to those individuals accepted in the program based on age and length of service; thus, since debtor had no other source of income afforded by regular employment, these funds were necessary for his support and were exempt property under provisions of former subsection (1)(e) of this section. In re Carlson, 192 Bankr. 755 (Bankr. D. Idaho 1996).

Right to Payment of Money.

Real property may be exempt under subdivision (1)(b) of this section where the underlying right is a right to payment of money; real property transferred in satisfaction of future child support obligations would be exempt where the property was to be sold and the proceeds used to pay the children's obligations. In re Russell, 163 Bankr. 584 (Bankr. D. Idaho 1994).

Proceeds from the sale of a debtor's marital homestead were not exempt under subsection (1)(b) of this section as funds necessary to make support payments to his ex-spouse because: (1) the statute provides an exemption of support monies to the extent necessary for the support of a debtor and his dependents, and, thus, it does not allow an exemption for funds paid out by a debtor to benefit another; (2) the statute only exempts money received for support, and here, the funds were received as sale proceeds; and (3) while it was true that the debtor's ex-spouse had a priority claim under 11 U.S.C.S. §§ 507(a)(1) and 726, allowing the debtor to use the sale proceeds to pay support payment would essentially allow him to use an asset of his bankruptcy estate to prefer a particular creditor at the expense of other creditors. In re Marriott, 427 B.R. 887 (Bankr. D. Idaho 2010).

The debtor was not allowed, under paragraph (1)(b), to exempt unpaid child support that she was owed, because her children were adults and did not rely on her for support, and the exemption is only for present and future needs of a spouse or minor children. In re Mathews, 565 B.R. 662 (Bankr. D. Idaho 2017).

Cited University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs, 116 Idaho 434, 776 P.2d 443 (1989); University of Utah Hosp. v. Board of County Comm'rs, 121 Idaho 340, 824 P.2d 915 (Ct. App. 1992); In re Matsuura, 2013 Bankr. LEXIS 5264 (Bankr. D. Idaho Dec. 16, 2013).

Decisions Under Prior Law

Commingling.

Act of a debtor in procuring a third person to draw the debtor's wages from his employer and to hold them subject to the call of the debtor does not constitute such commingling of wages with other funds to defeat debtor's right of exemption. Elliott v. Hall, 3 Idaho 421, 31 P. 796 (1918) (see 2017 amendment).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 119 et seq.

C.J.S. — 33 C.J.S., Executions, § 27 et seq.

§ 11-604A. Pension money exempt. — (1) It is the policy of the state of Idaho to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Idaho under 11 U.S.C. section 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Idaho as a pension from the government of the United States, whether the money be in the actual possession of a citizen or be deposited or loaned, shall be exempt from execution, attachment, garnishment, seizure, or other levy by or under any legal process whatever. When a debtor dies, or absconds, and leaves his family any money exempted by this subsection, the money shall be exempt to the family as provided in this subsection. This subsection shall not apply to any child support collection actions, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Idaho under any employee benefit plan, and any fund created by the benefit plan or arrangement, shall be exempt from execution, attachment, garnishment, seizure, or other levy by or under any legal process whatever. This subsection shall not apply to any child support collection actions, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in the plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for those orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended, or section 409 of the Internal Revenue Code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection shall not prohibit actions against an employee benefit plan or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means: (a) Assets held, payments made, and amounts payable under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service; (b) Any plan or arrangement, whether funded by a trust, an annuity contract, an insurance contract, or an individual account, that is described in sections 401(a), 403(a), 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended, or section 409 of the Internal Revenue Code as in effect before January 1, 1984. The term "employee benefit plan" also means any rights accruing on account of money paid currently or in advance pursuant to a college savings program described in chapter 54, title 33, Idaho Code.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the beneficiary and the trustee or custodian of the plan, or the ability of the debtor to withdraw, borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in the plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for those orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended, or section 409 of the Internal Revenue Code as in effect before 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides home maintenance or support.

(6) Unless contrary to applicable federal law, nothing contained in subsection (3), (4) or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an individual retirement account held in the name of, or on account of, the other spouse, the "account holder spouse." At the death of the nonaccount holder spouse, the account holder spouse may transfer or distribute the community property interest of the nonaccount holder spouse in the account holder spouse's individual retirement account to the nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonaccount holder spouse, or the law of intestate succession if applicable, and that distributee may, but shall not be

required to, obtain an order from a court of competent jurisdiction, including a nonjudicial dispute resolution agreement, or other order, entered to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonaccount holder spouse's community property interest in an individual retirement account shall be considered a person entitled to the full protection of subsection (3) of this section. The nonaccount holder spouse's consent to a beneficiary designation by the account holder spouse with respect to an individual retirement account shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation or transfer of the nonaccount holder spouse's community property interest in an individual retirement account. For purposes of this subsection, the term "nonaccount holder spouse" means the spouse of the person in whose name the individual retirement account is maintained. The term "individual retirement account" includes an individual retirement account and an individual retirement annuity both as described in section 408 of the Internal Revenue Code of 1986, as amended, a Roth individual retirement account as described in section 408A of the Internal Revenue Code of 1986, as amended, and an individual retirement bond as described in section 409 of the Internal Revenue Code as in effect before January 1, 1984.

History.

I.C., § 11-604A, as added by 1996, ch. 309, § 2, p. 1014; am. 1999, ch. 305, § 1, p. 762; am. 2001, ch. 288, § 1, p. 1024; am. 2004, ch. 167, § 1, p. 543.

STATUTORY NOTES

Federal References.

Sections 401, 403, 408, 408A, 409, and 457 of the Internal Revenue Code, cited throughout this section, are compiled as 26 U.S.C.S. §§ 401, 403, 408, 408A, 409 and 457.

Compiler's Notes.

Section 3 of S.L. 1996, ch. 309 read: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared

invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 2 of S.L. 2004, ch. 167 declared an emergency. Approved March 23, 2004.

CASE NOTES

Bankruptcy.

Bankruptcy planning.

Claim of partial exemption.

College savings accounts.

Hardship withdrawal.

Lack of objection.

Spousal support.

Bankruptcy.

Income that is arguably exempt under this section may nonetheless be considered when assessing a debtor's ability to fund a chapter 13 plan. In re Soto, 2012 Bankr. LEXIS 2632 (Bankr. D. Idaho June 8, 2012).

For the purposes of this exemption statute, "employee benefit plan" is defined expansively to include "any plan or arrangement" described in one of six sections of 42 USCS § 408, which governs the establishment and operation of IRAs. Accordingly, in Idaho, a bankruptcy debtor may exempt his or her interest in a qualified IRA. In re Smith, 570 B.R. 844 (Bankr. D. Idaho 2017).

Bankruptcy Planning.

Bankruptcy court denied a bankruptcy trustee's objections to Chapter 7 debtors' actions two weeks before declaring bankruptcy, where debtors withdrew $12,000 cash value from a life insurance policy, claimed exemption for the $4,872 remaining in the policy under § 11-605(10), and purchased two $6,000 IRAs and claimed exemption for them under this section. The debtors were allowed to maximize their exemptions before

they declared bankruptcy and did not commit fraud on their creditors. In re Thomas, 477 B.R. 778 (Bankr. D. Idaho 2012).

Claim of Partial Exemption.

The manner in which the debtors' exemption was asserted suggested that part of the value in a 401(k) was not claimed exempt and, thus, remained part of the bankruptcy estate. That value had to be considered in evaluating whether the plan met the requirement that unsecured creditors in a chapter 13 receive as much as they would should debtors liquidate under chapter 7. In re Hobart, 452 B.R. 789 (Bankr. D. Idaho 2011).

College Savings Accounts.

Although Idaho residents who declared bankruptcy are allowed under this section to exempt money that was in a college savings account they established under §§ 33-5401 through 33-5410 from creditors' claims, a Chapter 7 debtor was not allowed to exempt money she contributed to three college savings accounts less than 365 days before she declared bankruptcy, plus dividends and capital gains that were paid during that 365-period, because she created her college savings accounts under Virginia, not Idaho, law. In re Acarregui, 572 B.R. 247 (Bankr. D. Idaho 2017).

Hardship Withdrawal.

Chapter 7 debtors' claim of exemption under this section for funds acquired through a hardship withdrawal from a retirement plan was disallowed. The funds from the distribution were deposited in the debtors' money market account and neither continued to be held in an employee benefit plan nor were paid to the debtors on account of one of the statutory conditions — by reason of age, illness, disability, or length of service. In re Carlson, 2009 Bankr. LEXIS 3319 (Bankr. D. Idaho Aug. 20, 2009).

Lack of Objection.

Exemption was allowed for the transfer of debtors' assets to an IRA under this section because the trustee made no objection under federal Bankruptcy Rule 4003(b). Gugino v. Orlando (In re Ganier), 403 B.R. 79 (Bankr. D. Idaho 2009).

Spousal Support.

A spouse owed support under an agreement drawn up separate from the divorce proceedings may use a qualified domestic relations order to reach the defaulting spouse's 401(k) savings to enforce a judgment under that agreement. Kesting v. Kesting, 160 Idaho 214, 370 P.3d 729 (2016).

§ 11-605. Exemptions of personal property and disposable earnings subject to value limitations. — (1) An individual is entitled to exemption of the following property to the extent of a value not exceeding one thousand dollars ($1,000) on any one (1) item of property and not to exceed a total value of seven thousand five hundred dollars ($7,500) for all items exempted under this subsection:

(a) Household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the individual or a dependent of the individual;

(b) If reasonably held for the personal use of the individual or a dependent, wearing apparel, animals, books, and musical instruments; and

(c) Family portraits and heirlooms of particular sentimental value to the individual.

(2) An individual is entitled to exemption of jewelry, not exceeding one thousand dollars ($1,000) in aggregate value, if held for the personal use of the individual.

(3) An individual is entitled to exemption, not exceeding ten thousand dollars ($10,000) in aggregate value, of implements, professional books, business equipment and tools of the trade; and to an exemption of one (1) motor vehicle to the extent of a value not exceeding ten thousand dollars ($10,000).

(4) An individual is entitled to an exemption of provisions of food or water, together with storage containers and shelving, sufficient for twelve (12) months for use of the individual or a dependent or dependents of the individual.

(5) All courthouses, jails, public offices and buildings, schoolhouses, lots, grounds and personal property appertaining thereto, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this state, or for the use of schools, and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire

departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state. No article or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a mortgage thereon.

(6) An individual is entitled to an exemption of all arms, uniforms and accoutrements required for the use of an individual as a peace officer, a member of the national guard or military service.

(7) An individual is entitled to an exemption of a water right not to exceed one hundred sixty (160) inches of water used for the irrigation of lands actually cultivated by the individual, and the crop or crops growing or grown on fifty (50) acres of land, leased, owned or possessed by an individual cultivating the same, provided, that the amount of the crops so exempted shall not exceed the value of five thousand dollars ($5,000).

(8) An individual is entitled to exemption of one (1) firearm valued at one thousand five hundred dollars ($1,500), or less.

(9) An individual is entitled to an exemption of any life insurance contract owned by an individual, other than a credit life insurance contract, including, but not limited to, any accrued dividend or interest under, loan value of, or cash surrender value of, such life insurance contract owned by the individual, excluding accrued dividends, interest, loan value, and/or cash surrender value resulting from premiums paid into the life insurance contract within six (6) months prior to the filing of a bankruptcy petition, as defined in 11 U.S.C. 101, or the date of attachment or levy on execution, as defined in section 11-201, Idaho Code, whichever is applicable.

(10) An individual is entitled to an exemption of the individual's aggregate interest in any tangible personal property, not to exceed the value of one thousand five hundred dollars ($1,500).

(11) An individual is entitled to an exemption for his disposable earnings as defined in subsection 2. of section 11-206, Idaho Code, wages, salaries, and compensation for personal services rendered, to the extent such earnings, wages, salaries, and compensation have been earned but have not

been paid to the individual, not to exceed two thousand five hundred dollars ($2,500) in a calendar year. This exemption shall not affect the application or operation of the garnishment restrictions set forth in section 11-207, Idaho Code.

History.

I.C., § 11-605, as added by 1978, ch. 348, § 1, p. 909; am. 1983, ch. 16, § 1, p. 50; am. 1985, ch. 175, § 1, p. 457; am. 1990, ch. 275, § 1, p. 776; am. 1999, ch. 307, § 1, p. 764; am. 2000, ch. 231, § 2, p. 645; am. 2008, ch. 57, § 1, p. 147; am. 2010, ch. 223, § 1, p. 498; am. 2015, ch. 112, § 1, p. 279; am. 2020, ch. 232, § 1, p. 684.

STATUTORY NOTES

Cross References.

Homestead exemption, § 55-1001 et seq.

Amendments.

The 2008 amendment, by ch. 57, substituted "five thousand dollars ($5,000)" for "three thousand dollars ($3,000)" in subsection (3).

The 2010 amendment, by ch. 223, in the section catchline, inserted "and disposable earnings"; in the introductory paragraph in subsection (1), substituted "seven hundred fifty dollars ($750)" for "five hundred dollars ($500)" and "seven thousand five hundred dollars ($7,500)" for "five thousand dollars ($5,000)"; in subsection (3), substituted "two thousand five hundred dollars ($2,500)" for "one thousand five hundred dollars ($1,500)," inserted "business equipment," and substituted "seven thousand dollars ($7,000)" for "five thousand dollars ($5,000)"; added subsection (4) and redesignated subsequent subsections accordingly; in subsection (8), substituted "seven hundred fifty dollars ($750), or less" for "less than five hundred dollars ($500)"; and added subsection (12).

The 2015 amendment, by ch. 112, rewrote subsection (9), which formerly read: "Any unmatured life insurance contract owned by an individual, other than a credit life insurance contract"; deleted former subsection (10), which read: "An individual's aggregate interest, not to exceed five thousand dollars ($5,000) in any accrued dividend or interest under, or loan value of,

any unmatured life insurance contract owned by the individual under which the insured is the individual or a person of whom the individual is a dependent"; and redesignated former subsections (11) and (12) as present subsections (10) and (11).

The 2020 amendment, by ch. 232, substituted "one thousand dollars ($1,000)" for "seven hundred fifty dollars ($750)" near the middle of the introductory paragraph in subsection (1); in subsection (3), substituted "ten thousand dollars ($10,000)" for "two thousand five hundred dollars ($2,500)" near the beginning, and substituted "ten thousand dollars ($10,000)" for "seven thousand dollars ($7,000)" at the end; substituted "An individual is entitled to an exemption of all arms, uniforms and accoutrements" for "All arms, uniforms and accouterments" at the beginning of subsection (6); in subsection (7), substituted "An individual is entitled to an exemption of a water right" for "A water right" at the beginning and substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" at the end; in subsection (9), substituted "An individual is entitled to an exemption of any life insurance" for "Any life insurance" at the beginning; rewrote subsection (10), which formerly read: "An individual's aggregate interest in any tangible personal property, not to exceed the value of eight hundred dollars ($800)"; and substituted "two thousand five hundred dollars ($2,500)" for "one thousand five hundred dollars ($1,500)" near the end of the first sentence in subsection (11).

Effective Dates.

Section 2 of S.L. 1983, ch. 16 declared an emergency. Approved March 7, 1983.

Section 3 of S.L. 2000, ch. 231 declared an emergency. Approved April 12, 2000.

Section 2 of S.L. 2010, ch. 223 declared an emergency. Approved March 31, 2010.

Section 3 of S.L. 2020, ch. 232 declared an emergency and made the amendments to this section applicable to bankruptcy petitions filed on and after March 23, 2020. Approved March 23, 2020.

CASE NOTES

Earnings.

Firearms.

Furnishings and appliances.

Heirlooms.

Insurance policies.

Mobile home.

Motor vehicles.

Musical instruments.

Pets.

Reasonably necessary.

Tools of trade.

Earnings.

Commissions that a debtor received after she declared Chapter 7 bankruptcy, when an insured renewed a policy that the debtor had sold to the insured before she declared bankruptcy, were property of her bankruptcy estate, because the right to receive those commissions existed pre-petition and the debtor was not required to perform personal services postpetition to receive renewal commissions. However, to the extent that the first-year commissions and the first-year advances that the debtor received pre-petition were property of her bankruptcy estate, 75% of those payments were exempt from creditors' claims under § 11-207 and the debtor could exempt the balance of those earnings, and part of her renewal commissions, under this section. In re Lott, 2018 Bankr. LEXIS 2126 (Bankr. D. Idaho July 19, 2018).

Firearms.

Since subsection (1)(a) of this section allows the exemption of one firearm per debtor, debtors may claim one firearm each. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) (see 1999 amendment).

Firearms could qualify as household goods provided debtor could establish the weapon was actually used in such a way as to facilitate the

daily operation and support of the household. In re Mason, 254 B.R. 764 (Bankr. D. Idaho 2000) (see 1999 amendment).

Furnishings and Appliances.

Subsection (1)(a) of this section does not allow debtors to exempt any furnishings and appliances but only those furnishings and appliances which are reasonable. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) ("reasonable" test deleted by 1999 amendment).

Heirlooms.

Court sustained a Chapter 7 trustee's objection to debtors' claim that a boat was exempt as an heirloom under paragraph (1)(c), where their deceased son purchased the boat from his aunt and they acquired the boat from his probate estate and intended to hold it until his son reached the age of majority, as this was not a multi-generational transfer. In re Merrill, 2012 Bankr. LEXIS 4451 (Bankr. D. Idaho Sept. 24, 2012).

Insurance Policies.

The trustee's objection to the Chapter 7 debtor's exemption under this section was sustained to the extent that it contested exemption of accrued dividends or interest under, or loan value of, the insurance policies in excess of $5,000 in the aggregate, but such objection would otherwise be overruled. In re Oxford, 274 B.R. 887 (Bankr. D. Idaho 2002) (see 2015 amendment).

Exemptions under former subsection (10) [now repealed] may only be taken by those who own an unmatured life insurance policy, and, even then, only if the person claiming the exemption is the insured or a dependent of the insured. Although parents own insurance policies on various minor children, they may not claim an exemption in those policies, and wife cannot claim an exemption on a policy owned by her husband. In re Steiner, 459 B.R. 748 (Bankr. D. Idaho 2010) (see 2015 amendment).

Wife who declared Chapter 7 bankruptcy properly claimed the exemption allowed by former subsection (10) [now repealed] of this section in the cash surrender value of a policy that insured her life, even though her husband owned the policy, because she had an ownership interest in the policy under Idaho's community property law. The husband purchased the policy on his wife's life after their marriage, and they paid all premiums due on the

policy using community property funds. In re Thompson, 2011 Bankr. LEXIS 2654 (Bankr. D. Idaho July 11, 2011) (see 2015 amendment).

Bankruptcy court denied a bankruptcy trustee's objections to Chapter 7 debtors' actions two weeks before declaring bankruptcy, where debtors withdrew $12,000 cash value from a life insurance policy, claimed exemption for the $4,872 remaining in the policy under former subsection (10) [now repealed], and purchased two $6,000 IRAs and claimed exemption for them under § 11-604A. The debtors were allowed to maximize their exemptions before they declared bankruptcy and did not commit fraud on their creditors. In re Thomas, 477 B.R. 778 (Bankr. D. Idaho 2012) (see 2015 amendment).

Trustee acted properly when he filed an objection to the debtor's claim that the cash value of five insurance policies that the debtor owned was exempt from creditors' claims under former subsection (10) [now repealed] and obtained an order which allowed him to liquidate all five policies and pay the debtor $5,000 out of $75,033 in proceeds that he received from the insurance company. Although the debtor could have claimed that the policies were exempt under subsection (9), he failed to do so. The trustee was not obliged to divine that the debtor intended to rely on subsection (9), when he claimed exemptions under former subsection (10) [now repealed]. In re Wisdom, 478 B.R. 394 (Bankr. D. Idaho 2012) (see 2015 amendment).

Subsections (9) and former (10) [now repealed] were intended by the legislature to protect two different types of interests in unmatured life insurance contracts: subsection (9) exempts the life insurance policy, while former subsection (10) [now repealed] exempts the life insurance policy's cash value. In re Wisdom, 478 B.R. 394 (Bankr. D. Idaho 2012) (see 2015 amendment).

If a debtor exempts a life insurance policy under subsection (9), the trustee cannot surrender the policy. Instead, the trustee may exercise other rights under the policy, such as directly borrowing the loan value of the policy leaving the debtor with the insurance policy in place, but encumbered by the loans, subject to the debtor's right to exempt $5,000 of the loan value, dividends, or interest. Wisdom v. Gugino (In re Wisdom), 490 B.R. 412 (D. Idaho 2013), aff'd, 649 Fed. Appx. 583 (9th Cir. 2016) (see 2015 amendment).

If a debtor wishes to exempt an insurance policy under subsection (9), he must actually claim that exemption. Debtor does not implicitly exempt an insurance policy under subsection (9), when he only claims an exemption under former subsection (10) [now repealed]. Wisdom v. Gugino (In re Wisdom), 490 B.R. 412 (D. Idaho 2013), aff'd, 649 Fed. Appx. 583 (9th Cir. 2016) (see 2015 amendment).

Mobile Home.

A mobile home may be claimed as a homestead exemption in bankruptcy proceedings, but may not be claimed as a personal property exemption. In re Rogers, 225 Bankr. 755 (Bankr. D. Idaho 1998).

Where the debtor sought to claim an exemption in a mobile home that she owned with her mother, pursuant to subsection (10) of this section and 11 U.S.C.S. § 522(b)(3)(B), she failed to show that her interest in the mobile home was exempt from process under § 11-609. In re Antonie, 432 B.R. 843 (Bankr. D. Idaho 2010), aff'd, 447 B.R. 610 (D. Idaho 2011).

Motor Vehicles.

This section does not preclude debtors from applying each of their exemptions to the same motor vehicle, or each individual exemption to a separate motor vehicle. In re Jackson, 147 Bankr. 49 (Bankr. D. Idaho 1992).

In Chapter 7 proceedings, since there was no written loan agreement between the debor and her creditor father, there was no perfected security interest which could be avoided by the bankruptcy trustee, and, thus, debtor was entitled to a $3000 motor vehicle exemption from proceeds of the sale of her vehicle. In re Seibold, 351 B.R. 741 (Bankr. D. Idaho 2006) (now $7000).

Bankruptcy court sustained a Chapter 7 trustee's objection to a debtor's claim that an all-terrain vehicle (ATV) that the trustee recovered from a person who bought the ATV from the debtor was the debtor's property, and that $800 of the ATV's value was exempt from creditors' claims. In re Ady, 2010 Bankr. LEXIS 3077 (Bankr. D. Idaho Aug. 25, 2010).

An all-terrain vehicle does not qualify for Chapter 7 exemption. The restricted license plate did not allow it to be driven on most Idaho roads, nor were any safety mechanisms required to obtain such a license; it remained

non-exempt even after the amendments to the license and registration requirements for ATVs under § 67-7122. In re Bosworth, 449 B.R. 104 (Bankr. D. Idaho 2011).

The motor vehicle exemption in subsection (3) does not include off-road vehicles, recreational vehicles, or those vehicles whose operation on the public highways would be illegal. In re Haworth, 604 B.R. 394 (Bankr. D. Idaho 2019).

Once the trustee has shown that a 1937 Ford is not properly equipped to operate on Idaho roads, he has met his burden to prove that the Ford does not qualify as a motor vehicle for purposes of the exemption in subsection (3). The burden, then, shifts to the debtors to demonstrate that the exemption is proper. In re Haworth, 604 B.R. 394 (Bankr. D. Idaho 2019).

Musical Instruments.

Subsection (1) of this section does not limit the number of musical instruments a debtor may exempt nor does it provide that the value of the exempt instruments when totaled may not exceed $500. In re Rushdi, 174 Bankr. 126 (Bankr. D. Idaho 1994).

Pets.

The fact that an animal does not physically reside within a debtor's house should not be determinative of whether that animal is to be classified as a household pet, since many people keep their pets outside while still regarding them as a part of the family's domestic setting. In re Gallegos, 226 Bankr. 111 (Bankr. D. Idaho 1998).

Where a family kept a horse in their rural home as their only pet, used it for purely personal purposes, and expended modest amounts on its upkeep, they could claim a household pet exemption. In re Gallegos, 226 Bankr. 111 (Bankr. D. Idaho 1998).

A family horse could be claimed as a household pet, since any attempt to abuse that exemption, such as claiming a thoroughbred race horse as a pet, would have been bridled not only by the "personal use" requirements, but by the dollar limitation contained in the statute. In re Gallegos, 226 Bankr. 111 (Bankr. D. Idaho 1998).

Reasonably Necessary.

Whether a particular item of household furnishings and appliances is reasonably necessary depends in part upon local custom and usage which may change over time. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) ("reasonably necessary" requirements abolished by 1999 amendment).

VCRs, televisions and stereos are now so prevalent in local households, they are reasonably necessary household furnishings and appliances and may be claimed as an exemption under subsection (1)(a) of this section; however, more than one TV or VCR should not be reasonably necessary to furnish a household and, thus, debtors will not be allowed to exempt any additional TVs, VCRs, or stereo entertainment units. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) ("reasonably necessary" requirements abolished by 1999 amendment).

While an exemption for utility, patio furniture and an entertainment cabinet will be allowed under subsection (1)(a) of this section, sporting goods, bowling balls, golf clubs, fishing equipment, camping equipment, video games and cameras are recreational items and recreational equipment is not reasonably necessary for the household and is, therefore, not exempt. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) ("reasonably necessary" requirements abolished by 1999 amendment).

Since a computer, computer system and software are luxury items as compared to reasonably necessary household items, claims for exemption of these items will not be allowed; however, a computer desk which is serviceable as an ordinary desk would be exempted. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) ("reasonably necessary" requirements abolished by 1999 amendment).

Creditor's contention that debtors' television, stereo and VCR are not exempt household furnishings or appliances runs contrary to long-standing rulings recognizing that these kinds of items may be exempted as reasonably necessary household appliances. In re Kinnemore, 181 Bankr. 516 (Bankr. D. Idaho 1995) ("reasonably necessary" requirements abolished by 1999 amendment).

What may be considered reasonable and necessary furnishings and appliances in a bankruptcy proceeding is determined in part by local custom

and usage. In re Andrews, 225 Bankr. 485 (Bankr. D. Idaho 1998) ("reasonably necessary" requirements abolished by 1999 amendment).

A certain amount of decorative items and hand tools are reasonable furnishings for a household, although a specific item of art which had a significant value or which was not commonly found in most households might be outside the scope of the statute. In re Andrews, 225 Bankr. 485 (Bankr. D. Idaho 1998) ("reasonably necessary" requirements abolished by 1999 amendment).

Tools of Trade.

Karaoke machine could not be exempted as a "tool of the trade"; debtor could still pursue his profession without the use of the Karaoke machine, as it was not essential in protecting and continuing debtor's living as a bar or restaurant manager. In re Fancher, 168 Bankr. 712 (Bankr. D. Idaho 1994).

The mere fact that a debtor uses an item in the earning of his livelihood is not sufficient to allow an exemption of the item under subsection (3) of this section; however where an employer expends money for the purpose of allowing an employee to work at home, those items actually used by the debtor to work at home may be considered tools of the trade and therefore exempt under this section. In re Biancavilla, 173 Bankr. 930 (Bankr. D. Idaho 1994) (see 2010 amendment).

Chapter 7 debtor, who previously designed furniture for a living and hoped to return to that occupation when he was physically and financially able to do so, was not entitled to claim an exemption for his woodworking tools as "tools of the trade" because the tools were not needed for his current, successful position as a window salesman. In re Moore, 349 B.R. 44 (Bankr. D. Idaho 2005).

Chapter 7 debtors, a physician and an accountant, were not entitled to an exemption under subsection (3) of this section for farm equipment as tools or implements because farming could not be considered the debtors' occupation and it did not generate income necessary for the debtors' continued financial support. In re McHugh, 2010 Bankr. LEXIS 2105 (Bankr. D. Idaho May 27, 2010).

Where debtor had formerly worked as a carpenter, but was currently working laying concrete, a tool trailer and a compressor, and other tools

formerly used in his carpentry work, were not necessary for the debtor's continued financial support and, therefore, were not exempt under subsection (3). The debtor's concrete work provided an adequate income to meet his family's basic needs at the present time. In re Blackburn, 2011 Bankr. LEXIS 178 (Bankr. D. Idaho Jan. 19, 2011).

Cited Idaho Falls Consol. Hosps. v. Board of Comm'rs, 109 Idaho 881, 712 P.2d 582 (1985); University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs, 116 Idaho 434, 776 P.2d 443 (1989); In re Jensen, 141 Bankr. 733 (Bankr. D. Idaho 1992); In re Dever, 250 B.R. 701 (Bankr. D. Idaho 2000); In re Oxford, 274 B.R. 887 (Bankr. D. Idaho 2002); In re DeHaan, 275 B.R. 375 (Bankr. D. Idaho 2002); In re Cerchione, 398 B.R. 699 (Bankr. D. Idaho 2009); In re Aeschbacher, 2011 Bankr. LEXIS 664 (Bankr. D. Idaho Feb. 11, 2011).

Decisions Under Prior Law

Family portraits.

Farmers.

Public buildings.

Tools of trade.

Family Portraits.

"Pictures and albums," referring to family photographs, may be construed to mean family portraits and their necessary frames. McMillan v. United States Fire Ins. Co., 48 Idaho 163, 280 P. 220 (1929).

Farmers.

It is not necessary that claimant should be actually engaged in farming at time exemption is claimed, where evidence shows that it was his former and expectant occupation. Aslett v. Evans, 48 Idaho 206, 280 P. 1036 (1929).

Hay being fed by a farmer to his animals is entitled to exemption although the farmer wanted to sell it and buy other hay at place to which he intended to move. Aslett v. Evans, 48 Idaho 206, 280 P. 1036 (1929).

Public Buildings.

It is universal rule, in absence of specific provision therefor, that general statutes granting mechanics' liens are not construed to include public buildings. Boise-Payette Lumber Co. v. Challis Indep. Sch. Dist. No. 1, 46 Idaho 403, 268 P. 26 (1928).

Tools of Trade.

Polyartist or jack of all trades may claim exemption of tools appropriate to more than one trade if he uses them in his business and the total value does not exceed the statutory limit. In re Robinson, 206 F. 176 (D. Idaho 1913).

Electric motor and lathe may properly be classed as implements and exempt when used by a mechanic in his business. In re Robinson, 206 F. 176 (D. Idaho 1913).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 119 et seq.

C.J.S. — 33 C.J.S., Executions, § 27 et seq.

ALR. — Jewelry and clothing as within debtor's exemptions under state statutes. 44 A.L.R.6th 481.

Construction and application of exemption for firearms under state law. 46 A.L.R.6th 401.

§ 11-606. Tracing exempt property. — (1) If property, or a part thereof, that could have been claimed as exempt, such as, a burial plot under subsection (1) of section 11-603, Idaho Code, a health aid under subsection (2) of section 11-603, Idaho Code, or personal property subject to a value limitation under paragraph (a) or (b) of subsection (1) or subsection (3) of section 11-605, Idaho Code, has been taken by condemnation, or has been lost, damaged, or destroyed, and the owner has been indemnified therefore [therefor], the individual is entitled to an exemption of proceeds that are traceable for three (3) months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under section 11-605, Idaho Code.

History.

I.C., § 11-606, as added by 1978, ch. 348, § 1, p. 909.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to correct the word used in the enacting legislation.

This section was enacted with a subsection (1), but no subsection (2).

CASE NOTES

Alimony.

Husband can not claim as objection to payment of alimony to his divorced wife that half of his present salary is community property belonging to his present wife. Humbird v. Humbird, 42 Idaho 29, 243 P. 827 (1926).

§ 11-607. Claims enforceable against exempt property. — (1) Notwithstanding other provisions of this act:

(a) A creditor may make a levy against exempt property except property described in section 11-603, Idaho Code, to enforce a claim for:

1. Alimony, support, or maintenance;

2. Unpaid earnings of up to one (1) month's compensation or the full-time equivalent of one (1) month's compensation for personal services of an employee;

3. State or local taxes;

4. Civil damages for offenses punishable by imprisonment in the state penitentiary, or for malicious or intentional injury to persons or property, or for damages resulting from the operation of a motor vehicle for which the defendant is convicted of reckless driving, driving while under the influence of intoxicating liquor or drugs, or driving while driver's license has been suspended or revoked, or claims for obtaining money or property by false pretenses or on credit by intentionally making materially false statements in writing respecting financial condition; or

5. Rent for any kind of dwelling place; claims for food and lodging; and

(b) A creditor may make a levy against exempt property to enforce a claim for:

1. The purchase price of the property or a loan made for the express purpose of enabling an individual to purchase property and used for that purpose; and

2. Labor or materials furnished to make, repair, improve, preserve, store, or transport the property.

(c) The department of health and welfare, bureau of child support enforcement [bureau of child support services] may make a levy against exempt property described in subsection (6) of section 11-603, Idaho

Code, to enforce a claim for child support or spousal support as defined in chapter 12, title 7, Idaho Code.

(2) This act does not affect any statutory lien or security interest in exempt property. Such a security agreement shall not be invalidated in or affected by any legal proceedings, including those under the federal bankruptcy act, involving the debtor.

History.

I.C., § 11-607, as added by 1978, ch. 348, § 1, p. 909; am. 1981, ch. 81, § 1, p. 113; am. 1985, ch. 159, § 8, p. 417; am. 1986, ch. 221, § 4, p. 584; am. 1989, ch. 88, § 58, p. 151.

STATUTORY NOTES

Federal References.

The federal bankruptcy act, referred to in subsection (2) of this section, is compiled as 11 U.S.C.S. § 101 et seq.

Compiler's Notes.

The words "this act" refer to S.L. 1978, ch. 348, which is compiled as §§ 11-601 to 11-604 and 11-605 to 11-608.

The bracketed insertion in subsection (1)(c) was added by the compiler to update the state agency name.

Effective Dates.

Section 70 of S.L. 1989, ch. 88 as amended by § 1 of S.L. 1990, ch. 45 provided that the act would become effective July 1, 1990.

CASE NOTES

Avoidance under bankruptcy.

Spousal support.

Avoidance Under Bankruptcy.

Were it not for creditor's lien, debtors would be entitled to an exemption in their television, stereo and VCR pursuant to § 11-605 (1)(a). Therefore,

under the U.S. Supreme Court's instructions, subsection (1)(a)(5) of this section does not protect creditor's lien from avoidance under the Bankruptcy Code. In re Kinnemore, 181 Bankr. 516 (Bankr. D. Idaho 1995).

Spousal Support.

This section does not distinguish between court-ordered support that is part of a final divorce decree and support provided for by an separate agreement between the divorcing parties, where the obligation is reduced to a judgment. Kesting v. Kesting, 160 Idaho 214, 370 P.3d 729 (2016).

A spouse owed support under an agreement drawn up separate from the divorce proceedings may use a qualified domestic relations order to reach the defaulting spouse's 401(k) savings to enforce a judgment under that agreement. Kesting v. Kesting, 160 Idaho 214, 370 P.3d 729 (2016).

§ 11-608. Claim of exemption. — Any person entitled to an exemption under this chapter may claim such exemption in the manner provided in section 11-203, Idaho Code.

History.

I.C., § 11-608, as added by 1978, ch. 348, § 1, p. 909; am. 1991, ch. 165, § 11, p. 395.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1978, ch. 348 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CASE NOTES

Cited University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs, 116 Idaho 434, 776 P.2d 443 (1989).

§ 11-609. Nonauthorization of federal bankruptcy exemptions. — In any federal bankruptcy proceeding, an individual debtor may exempt from property of the estate only such property as is specified under the laws of this state.

History.

I.C., § 11-609, as added by 1981, ch. 81, § 2, p. 113.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1981, ch. 81 declared an emergency. Approved March 23, 1981.

CASE NOTES

Exemptions allowed.

Limitations on exemptions.

Exemptions Allowed.

Under this section, Idaho debtors may access exemptions allowed under Idaho law, as well as those listed in 11 U.S.C.S. § 522(b)(3). In re Thomason, 2013 Bankr. LEXIS 886 (Bankr. D. Idaho Feb. 19, 2013).

Limitations on Exemptions.

Idaho has "opted-out" of the federal bankruptcy exemptions, and its citizens are limited to the exemptions allowed under state law. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Because Idaho opted out of the federal bankruptcy exemptions, a Chapter 7 debtor may utilize only the exemptions provided under state law pursuant to 11 U.S.C.S. § 522(b)(3) and this section; although Idaho's exemption statutes are to be liberally construed in the debtor's favor, they may not be "tortured" in the guise of liberal construction. In re Grimmett, 2010 Bankr. LEXIS 968 (Bankr. D. Idaho Mar. 24, 2010).

Where the debtor sought to claim an exemption in a mobile home that she owned with her mother, pursuant to subsection (10) of § 11-605 and 11 U.S.C.S. § 522(b)(3)(B), she failed to show that her interest in the mobile home was exempt from process under this section. In re Antonie, 432 B.R. 843 (Bankr. D. Idaho 2010), aff'd, 447 B.R. 610 (D. Idaho 2011).

Under 11 U.S.C.S. § 522(b)(3)(A), Chapter 7 debtors who resided in Idaho were required to apply the Idaho homestead exemption, §§ 55-1001, 55-1003, and 55-1004; the debtors could not apply the Idaho homestead exemption to a home located in Washington state and could not apply Washington state homestead law to their case in Idaho. In re Harris, 2010 Bankr. LEXIS 2020 (Bankr. D. Idaho June 23, 2010).

Because Idaho has opted out of the Bankruptcy Code's exemption scheme, debtors in Idaho may claim only those exemptions allowable under Idaho law, as well as those listed in 11 U.S.C.S. § 522(b)(3). In re Forshee, 2010 Bankr. LEXIS 3044 (Bankr. D. Idaho Sept. 16, 2010).

Cited In re Peters, 168 Bankr. 710 (Bankr. D. Idaho 1994); In re Rushdi, 174 Bankr. 126 (Bankr. D. Idaho 1994); In re Crampton, 249 B.R. 215 (Bankr. D. Idaho 2000); In re Dever, 250 B.R. 701 (Bankr. D. Idaho 2000); In re Mason, 254 B.R. 764 (Bankr. D. Idaho 2000); In re Oxford, 274 B.R. 887 (Bankr. D. Idaho 2002); In re Cerchione, 398 B.R. 699 (Bankr. D. Idaho 2009); In re Thomas, 477 B.R. 778 (Bankr. D. Idaho 2012); In re Merrill, 2012 Bankr. LEXIS 4451 (Bankr. D. Idaho Sept. 24, 2012); In re Matsuura, 2013 Bankr. LEXIS 5264 (Bankr. D. Idaho Dec. 16, 2013); In re Johns, 504 B.R. 657 (Bankr. D. Idaho 2014).

Chapter 7
GARNISHMENTS

Sec.

11-701. Definitions.

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11-731. Application of preceding sections.

§ 11-701. Definitions. — As used in this chapter:

(1) "Continuing garnishment" means a garnishment of wages of the judgment debtor that continues, subject to the limitations found in section 11-705, Idaho Code, until the debt is satisfied.

(2) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. This does not include amounts due to or received by a taxpayer in the form of an Idaho income tax refund.

(3) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(4) "Financial institution" means any state bank, national bank, trust company, savings and loan association, savings bank, federal savings and loan association, federal savings bank or credit union, as those terms are defined in title 26, Idaho Code, or any federal credit union organized under the federal credit union act, 12 U.S.C. 1751, et seq., or a state credit union organized under the Idaho credit union act in chapter 21, title 26, Idaho Code. The term also includes any other institution that holds and receives deposits, savings or share accounts; issues certificates of deposit; or provides to its customers any deposit accounts that are subject to withdrawal by check, instrument, order or electronic means to effect third-party payments.

(5) "Garnishee" means a person or institution that is indebted to or is in possession of property, money or credits of a debtor whose property has been subjected to garnishment.

(6) "Garnishment" means a judicial proceeding in which a creditor or potential creditor asks the court to order a third party who is indebted to, or is in possession of, property, money or credits of the debtor to turn over to the creditor any of the debtor's property, money or credits held by that third party.

(7) “Wage garnishment” means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

History.

I.C., § 11-701, as added by 2017, ch. 303, § 9, p. 799.

§ 11-702. Time when returnable — Record in execution book. — A garnishment execution may be made returnable at any time not less than ten (10) but not more than ninety (90) days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed. When the execution is returned, the clerk must attach it to the judgment roll and record the execution and the return thereto at large, and certify the same under his hand as true copies in a book to be called the "execution book," which book must be indexed with the names of the judgment creditors and judgment debtors in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public without charge. It is evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, mutilated or lost.

History.

I.C., § 11-702, as added by 2017, ch. 303, § 9, p. 799.

§ 11-703. Garnishment — Service of writ of execution or garnishment — Financial institutions. — (1) Upon receiving written directions from the judgment creditor or his attorney, that any person or corporation, public or private, has in his or its possession or control, any credits or other personal property belonging to the judgment debtor, or is owing any debt to the judgment debtor, the sheriff shall serve upon any such person, or corporation identified in the judgment creditor's written directions all of the following documents:

(a) A copy of the writ;

(b) A notice that such credits, or other property, or debts, as the case may be, are attached in pursuance of such writ;

(c) A notice of exemptions available under federal and state law;

(d) Instructions to debtors and third parties for asserting a claim of exemption;

(e) A form for making a claim of exemption; and

(f) If the garnishee is a financial institution, a search fee of five dollars ($5.00) and the last known mailing address of the judgment debtor and, if known, a tax identification number that will enable the garnishee to identify the judgment debtor on its records.

The documents specified in paragraphs (c) through (e) of this subsection shall be in a form as provided in section 11-707, Idaho Code.

(2) In case of service upon a corporation including, but not limited to, any financial institution, the same may be had by delivering a copy of the papers to be served, if upon a private corporation, to any officer, manager or designated agent thereof, and if upon a public or municipal corporation, to the mayor, president of the council or board of trustees, or any presiding officer, or to the secretary or clerk thereof.

(3) In the event a financial institution operates more than one (1) office where deposits are received within the state of Idaho, the banking or trust corporation may, by notifying the Idaho department of finance, designate a particular office for the service of attachment, execution and garnishment

papers. Such office may be located either within or outside the state of Idaho. The Idaho department of finance shall post the list of such designated offices on its web page for access by the public.

If a financial institution operating more than one (1) office where deposits are received has designated a particular office for the attachment, execution, or garnishment, then service of such papers made on the office so designated shall be valid and effective as to moneys to the judgment debtor's credit held in the possession or control of any of the financial institution's branches or offices located within or outside the state of Idaho.

If service of the attachment, execution or garnishment papers is not made on the designated office of the financial institution, but instead is made on another office of the financial institution located in the state of Idaho, then service of such papers shall be valid and effective as to moneys to the judgment debtor's credit in that particular office and as to other personal property belonging to the judgment debtor held in the possession or control of that particular office, but shall only become valid and effective as to moneys to the judgment debtor's credit held in the possession or control of any of the financial institution's other offices upon receipt of the attachment, execution or garnishment papers by the designated office. Such financial institution may, but is under no obligation to, transmit the original or a copy of the papers from the particular office served to the designated office.

Service on any financial institution is effective as against the moneys and other personal property to the judgment debtor's credit which are in the possession or control of the financial institution named in the garnishment, but not any affiliate, parent or subsidiary not named. If the garnishment fails to sufficiently distinguish the financial institution from any affiliate, parent or subsidiary thereof, such that it is not clear which entity is intended to be the garnishee, the garnishment may be returned unsatisfied.

(4) The provisions of this section and sections 11-706, 11-707, 11-709 and 11-710, Idaho Code, shall apply to any levy by execution pursuant to chapter 5, title 8, Idaho Code.

History.

I.C., § 11-703, as added by 2017, ch. 303, § 9, p. 799.

STATUTORY NOTES

Cross References.

Department of finance, § 67-2701 et seq.

§ 11-704. Employer — Continuous garnishment. — When the garnishee is the employer of the judgment debtor, the judgment creditor, upon application to the court, shall have issued by the clerk of court, a continuing garnishment directing the employer-garnishee to pay to the sheriff such future moneys coming due to the judgment debtor as may come due to said judgment debtor as a result of the judgment debtor's employment. This continuing garnishment shall continue in force and effect until the judgment is satisfied. The judgment creditor shall be solely responsible for ensuring that the amounts garnished do not exceed the amount due on the judgment. If additional garnishments are issued during the term of a continuing garnishment and the continuing garnishment is the maximum allowed under the provisions of section 11-712, Idaho Code, the additional garnishments cannot be served until the continuing garnishment is satisfied, or until the amount taken by the continuing garnishment is less than the maximum allowed. Additional garnishments issued during the term of a continuing garnishment must be served in the order in which presented.

History.

I.C., § 11-704, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Wife of Judgment Debtor.

The spouse of the defendant, having not been a named party defendant, did not qualify as a judgment debtor and, was not within the scope of this section and, thus, her wages could not be garnished. Miller v. Miller, 113 Idaho 415, 745 P.2d 294 (1987).

§ 11-705. Sheriff's return on continuous wage garnishment and continuous garnishment for child support. — (1) In the case of continuing garnishments for wages, the sheriff shall file interim returns at intervals not to exceed fourteen (14) days, whenever the amount collected in the fourteen (14) day period is at least one hundred dollars ($100), but in any event, interim returns on such continuous garnishment shall be filed by the sheriff at intervals not to exceed sixty (60) days.

(2) Where an execution or garnishment against earnings or unemployment benefits for a delinquent child support obligation is served upon any person or upon the state of Idaho and there is in possession of such person or the state of Idaho any such earnings or any unemployment benefits of the judgment debtor, the execution and the garnishment shall operate continuously and shall require such person or the state of Idaho to withhold the nonexempt portion of earnings or unemployment benefits at each succeeding earnings or unemployment benefits disbursement interval until released by the sheriff at the written request of the judgment creditor or until the judgment for child support debt, in the dollar amount specifically set forth on the writ of execution and subject to garnishment as of the date the writ of execution is issued, is discharged or satisfied in full; provided however, that interim returns on such continuous execution or garnishment shall be filed by the sheriff at intervals not to exceed fourteen (14) days, whenever the amount collected in the fourteen (14) day period is at least equal to fifty dollars ($50.00), but in any event, interim returns on such continuous garnishment shall be filed by the sheriff at intervals not to exceed thirty (30) days. The proportion of earnings subject to garnishment as compared to total available earnings or unemployment benefits shall be limited to the percentage restrictions on garnishment of wages for child support as provided in section 11-712, Idaho Code.

History.

I.C., § 11-705, as added by 2017, ch. 303, § 9, p. 799.

§ 11-706. Documents to be provided by judgment creditor — Duties of sheriff — Service and mailing criteria — Time computation. — With respect to any garnishment or execution, the judgment creditor shall provide the sheriff with sufficient copies of the writ and other documents required to be served for service on the judgment debtor and each additional party identified in the judgment creditor's written directions and shall provide an envelope addressed to each person required to be served. If the documents are to be mailed, proper postage shall be affixed. The sheriff shall not delay service for lack of sufficient copies or postage and shall make any additional copies and affix any additional postage necessary. The sheriff may charge the judgment creditor for the actual costs of any additional copies and postage required, which costs shall be in addition to the fees permitted under section 11-729, Idaho Code.

Personal service shall be accomplished in the same manner provided for service of summons under the Idaho rules of civil procedure. Provided however, that in the case of garnishments the county sheriff shall have the option of accomplishing personal service by United States certified mail, return receipt requested, or United States first class mail with a facsimile or electronic mail acknowledgment of such service by the garnishee. Unless otherwise provided to the contrary, the date when an item is deposited in the United States mail shall constitute the date of mailing and the date of service shall be the date when the garnishee signs the return receipt for the certified mail or the date the garnishee sends its facsimile or electronic mail acknowledgment of service. In computing any period of time within which an act is to be accomplished, the day of the act after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it falls on a weekend or legal holiday, in which event the period runs until the close of business of the first business day after the weekend or holiday, except that this provision shall not extend the time within which hearing on a motion to contest a claim of exemption or third-party claim must be set as provided in section 8-540, Idaho Code, and section 11-203, Idaho Code.

The sheriff shall not be required to investigate or assure the accuracy and completeness of the addresses of the parties to be served or any other

information provided by the judgment creditor.

History.

I.C., § 11-706, as added by 2017, ch. 303, § 9, p. 799.

§ 11-707. Forms for notice of exemptions, instructions to debtors and third parties and claim of exemption. — The forms used for notice of exemptions, instructions to debtors and third parties and claims of exemption shall be those prescribed by rules promulgated or orders issued by the supreme court and posted on the website of the supreme court. The forms shall be made available in English and Spanish language translations in the offices of each county sheriff. Notice, written in Spanish, of the availability of these documents in Spanish translation shall be set forth on the notice of exemptions.

History.

I.C., § 11-707, as added by 2017, ch. 303, § 9, p. 799.

§ 11-708. Interrogatories submitted to garnishee. — Written interrogatories shall be delivered to the garnishee at the time of serving notice of garnishment. The interrogatories shall be in a form prescribed by rules promulgated or orders issued by the supreme court.

History.

I.C., § 11-708, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Identity of judgment debtor.

Notice of garnishment.

Identity of Judgment Debtor.

Where interrogatory served upon bank with a writ of execution named as judgment-debtor a corporation with a name similar to bank customer, the bank should have answered either that it had no funds in the name of the judgment debtor or that it did not have funds in that name but did have funds in a similar name thereby placing the burden on the judgment creditor to take further action; absent any such affirmative action by the creditor or the court, the bank would not be entitled to treat its customer's account as impounded. Yacht Club Sales & Serv., Inc. v. First Nat'l Bank, 101 Idaho 852, 623 P.2d 464 (1980).

Notice of Garnishment.

"Notice of garnishment," referred to in this section, is a notice that property levied on is attached. Eagleson v. Rubin, 16 Idaho 92, 100 P. 765 (1909).

§ 11-709. Service on judgment debtor and third parties by sheriff. — Within two (2) business days after service of the writ and other documents as provided in section 11-703, Idaho Code, or if service is upon a financial institution, within one (1) business day, the sheriff shall hand deliver or mail to the judgment debtor and any third party named in the judgment creditor's written directions as a co-owner or having an interest in the property or money to be levied upon, one (1) copy of all the documents and if the garnishee is a financial institution, the search fee and other information specified in section 11-703(1), Idaho Code. The judgment creditor shall identify in the judgment creditor's written directions the last known mailing address of the judgment debtor and any third party to be served. The sheriff shall indicate on the return of the writ filed with the court the date and manner of service upon the judgment debtor and any third party and shall indicate the documents served.

If at the time of service of the writ the sheriff receives written answer from the garnishee stating that it has no money or other personal property belonging or owing to the judgment debtor, compliance with the provisions of this section shall not be required.

History.

I.C., § 11-709, as added by 2017, ch. 303, § 9, p. 799.

§ 11-710. Service on judgment debtor and third parties by a financial institution. — If the writ and notice of garnishment are served upon a financial institution holding money or accounts belonging to the judgment debtor, the garnishee shall within three (3) business days after such service, mail or hand deliver a copy of all documents served upon it by the sheriff:

(1) To the judgment debtor at the address to which account statements or other pertinent account documentation are normally sent, or if the money is not in an account, to the last known address of the judgment debtor shown upon the records of the garnishee at the time of service upon it of the writ; and

(2) To any other person shown upon the records of the garnishee as a co-owner or having an interest in the money or accounts garnished at the last known address of the third party shown upon the records of the garnishee at the time of service upon it of the writ.

The financial institution shall be entitled to deduct a single fee of not to exceed ten dollars ($10.00) from the money transferred to the sheriff pursuant to the garnishment to cover the costs associated with the processing and service of the documents. The fee herein provided shall be the only processing and service fee to which the financial institution is entitled regardless of the number of parties to which documents are sent and is in addition to the search fee specified in section 11-703(1)(f), Idaho Code. Upon being notified by the sheriff that money transferred pursuant to the garnishment has been released as a result of a court determination that the money is exempt or a failure by the judgment creditor to contest the claim of exemption, the garnishee shall recredit the fee to the judgment debtor's account or reimburse the judgment debtor therefor and the judgment creditor shall reimburse the garnishee for the fee.

The garnishee shall indicate in the answer to interrogatories as provided in section 11-708, Idaho Code, the date and manner of service of the documents upon the judgment debtor and any third party as herein required but shall not be required to disclose the names or addresses of any third party served.

The garnishee shall only be required to serve on the judgment debtor and any third-party copies of those documents served upon it by the sheriff.

History.

I.C., § 11-710, as added by 2017, ch. 303, § 9, p. 799.

§ 11-711. Claim of exemption by judgment debtor. — The judgment debtor in the main action may file a claim of exemption setting forth any facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for the judgment creditor's claim, and if issue thereon be joined by the judgment creditor it shall be tried with the issues as to the garnishee's liability, and if the property or debt, or any part thereof, is found to be thus exempt or not liable, judgment shall be rendered accordingly.

History.

I.C., § 11-711, as added by 2017, ch. 303, § 9, p. 799.

§ 11-712. Restriction on wage garnishment — Maximum. — (1) Except as provided in subsection (2) of this section, the maximum amount of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment shall not exceed:

(a) Twenty-five percent (25%) of his disposable earnings for that week; or

(b) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C.A. 206(a)(1) in effect at the time the earnings are payable, whichever is less.

In the case of earnings for any pay period other than a week, the Idaho commissioner of labor shall by regulation prescribe a multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (b) of this subsection.

(2)(a) The restrictions of subsection (1) of this section shall not apply in the case of any order of any court for the support of any person, any order of any court of bankruptcy under chapter XIII of the bankruptcy act, or any debt due for any state or federal tax.

(b) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(i) Where such individual is supporting his spouse or dependent child, other than a spouse or child with respect to whose support such order is used, fifty percent (50%) of such individual's disposable earnings for that week; and

(ii) Where such individual is not supporting such a spouse or dependent child described in subparagraph (i) of this paragraph, sixty percent (60%) of such individual's disposable earnings for that week; except that with respect to the disposable earnings of any individual for any workweek, the fifty percent (50%) specified in subparagraph (i) of this paragraph shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in this subparagraph shall be deemed

to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such workweek.

History.

I.C., § 11-712, as added by 2017, ch. 303, § 9, p. 799.

STATUTORY NOTES

Cross References.

Director of department of labor, § 72-1318.

§ 11-713. Deposits into financial institutions not subject to garnishment. — (1) Money, funds, benefits and personal property that are exempt from execution as provided in section 11-604(1), Idaho Code, including payable or paid for disability and illness, alimony, support and child support, as a result of bodily injury, wrongful death and the death of an insured shall remain exempt in an account at a financial institution.

(2) Wages that are exempt from execution as provided in sections 11-207 and 11-712, Idaho Code, shall remain exempt when deposited into an account at a financial institution. This subsection shall not apply to any accumulation of wages greater than seven thousand five hundred dollars ($7,500).

(3) All funds that are exempt under federal and state law; section 11-603, Idaho Code, including social security, SSI and veteran benefits, federal and state public assistance, medical savings accounts, child support payments deposited by the Idaho department of health and welfare, and unemployment benefits; section 11-604A, Idaho Code, retirement and pension benefits including public employee retirement system of Idaho (PERSI) and United States government benefits; and section 72-802, Idaho Code, worker's compensation benefits shall remain exempt without limitation when deposited into an account at a financial institution.

(4) The application of subsections (1), (2) and (3) of this section shall not be affected by the commingling of exempt and nonexempt funds in an account. For the purposes of identifying exempt funds in an account, first in, first out accounting principles shall be used.

(5) The provisions of this chapter shall not prevent a debtor from claiming any exemption that otherwise may be available under law for any amounts garnished from an account at a financial institution.

History.

I.C., § 11-713, as added by 2017, ch. 303, § 9, p. 799.

STATUTORY NOTES

Cross References.

Public employee retirement system, § 59-1301 et seq.

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 11-714. Financial institution obligations when served with writ of garnishment. — (1) If a notice of garnishment is served upon a financial institution that has an account or accounts of the debtor, the financial institution shall conduct a garnishment review of all accounts in the name of the debtor before taking any action that may affect funds in those accounts.

(2) The garnishment review shall be limited to the sixty-four (64) day period immediately preceding the date of service upon the financial institution of the garnishment. Solely for purposes of the garnishment review, any balance in the accounts on the sixty-fourth day immediately preceding the date of service upon the financial institution of the garnishment shall be deemed to be exempt. If the financial institution determines, solely from information transmitted to the financial institution by the payor, that one (1) or more payments of exempt funds as described in section 11-713(1), (2) or (3), Idaho Code, were deposited by direct or electronic deposit payment in an account of the debtor the total balance of deposited exempt funds in the debtor account is not subject to garnishment.

(3) The financial institution conducting the garnishment review need only review information transmitted to the financial institution by the payor of direct or electronic deposit payments in making its determination that funds in the accounts are of the types of payments described in section 11-713(1), (2) or (3), Idaho Code. The financial institution conducting the garnishment review shall have no obligation to inquire into the source of funds or examine any deposit item made by any means other than direct or electronic deposit, even if such review would disclose that the funds so deposited may be exempt from garnishment as described in section 11-713(1), (2) or (3), Idaho Code.

(4) If a notice of right to garnish federal benefits from the United States government or from a state child support enforcement agency is attached to or included in the garnishment as provided in 31 CFR 212, the financial institution shall not conduct a garnishment account review under this section and shall proceed on the garnishment.

(5) A financial institution conducting a garnishment review as required by this section is immune from civil liability to the garnishor, debtor or account owner from any act or omission with respect to the garnishment review, including without limitation, any incorrect determination made after applying good faith methods for determining whether funds in an account are exempt. If a court determines that a financial institution erred in its identification of funds in an account as exempt or nonexempt, the sole remedy in exemption proceedings shall be issuance of an order of the court that the financial institution must adjust its actions with respect to a writ of execution as soon as possible. A financial institution is not liable to an account holder or garnishor, and may not be assessed any penalty, by reason of any action or inaction in good faith including:

(a) Failure to deliver any funds;

(b) Failure to refuse to deliver any funds;

(c) Failure to provide the required notices to an account holder;

(d) Customary clearing and settlement adjustments made to a debtor's account that affect the balance in the debtor's account; and

(e) Any bona fide errors that occur despite reasonable procedures implemented by the financial institution to prevent those errors.

History.

I.C., § 11-714, as added by 2017, ch. 303, § 9, p. 799.

Idaho Code § 11-715

§ 11-715. Liability of garnishee. — All persons having in their possession or under their control, any credits or other personal property belonging to the judgment debtor, at the time of service upon them of a copy of the writ and notice, as provided in sections 11-711 and 11-712, Idaho Code, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the judgment creditor for the amount of such credits, property, or debts, until the garnishment be discharged or any judgment recovered by him be satisfied.

History.

I.C., § 11-715, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Debt not due.

Defenses.

Examination of garnishee.

Garnishee's remedy against debtor.

Maintenance of garnishment proceedings.

Debt Not Due.

If debt is not due at time of garnishment notice, it is not subject to garnishment. Everson v. Atlas Tie Co., 73 Idaho 91, 245 P.2d 773 (1952).

Defenses.

Garnishee who paid money into court upon receipt of garnishment notice, prior to accrual of debt, could not assert garnishment proceedings as a defense to suit on debt by assignee of account. Everson v. Atlas Tie Co., 73 Idaho 91, 245 P.2d 773 (1952).

Examination of Garnishee.

Where a debt claimed to be due by one person to another is attached, and such person has been examined and the existence of liability denied, the

court or judge has no power to order a judgment against such alleged debtor upon such examination. Lindenthal v. Burke, 2 Idaho 571, 21 P. 419 (1889).

Garnishee's Remedy Against Debtor.

Garnishee is liable to attaching creditor to amount of his indebtedness to defendant in attachment suit and, if sued by such defendant, may procure a suspension of proceedings until his liability to attaching creditor is determined by motion based on affidavit setting up garnishment. Van Ness v. McLeod, 3 Idaho 439, 31 P. 798 (1892).

Maintenance of Garnishment Proceedings.

Rule is that in order that creditor may maintain garnishment proceedings there must be subsisting right of action at law by defendant in his own right against garnishee, and latter can not be held liable unless it be shown that he is indebted to defendant at the time of commencement of garnishment proceedings. H. W. Johns-Manville Co. v. Allen, 37 Idaho 153, 215 P. 840 (1923).

Lien of attachment holds property independent of any surrender by garnishee. Sullivan v. Mabey, 45 Idaho 595, 264 P. 233 (1928).

§ 11-716. Notice of garnishment — Discharge of garnishee. — Any person who has been served with a copy of the writ and notice as provided in sections 8-506, 11-706, 11-707, 11-709, 11-710 and 11-715, Idaho Code, shall be deemed a garnishee, and service of copy of writ and the notice therein provided for, shall, for the purpose of sections 11-708, 11-711, 11-716, 11-719 through 11-727, 11-730 and 11-731, Idaho Code, be deemed to be notice of garnishment, and whenever any person shall have been served with notice of garnishment as herein defined, he may discharge himself by paying or delivering to the officer all debts owing by him to the judgment debtor, or a portion thereof sufficient to discharge the claim of the judgment creditor, or any or all money of the judgment debtor in his hands to a similar amount, taking a receipt therefor from the officer, that shall discharge such person from any and all liability to the extent of such payment, and that shall be held by the officer subject to the orders of the court out of which the writ issued.

History.

I.C., § 11-716, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Discharge of Garnishment.

Third parties having property or credits may discharge garnishment by delivering to officer making levy all such property or credits or sufficient money to discharge claim. Federal Reserve Bank v. Smith, 42 Idaho 224, 244 P. 1102 (1926), overruled on other grounds, Helgeson v. Powell, 54 Idaho 667, 34 P.2d 957 (1934).

§ 11-717. Examination of garnishee. — Any person owing debts to the judgment debtor, or having in his possession or under his control, any credits or other personal property belonging to the judgment debtor, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. If the garnishee be a corporation the officer or agent thereof having knowledge of the fact sought to be established may be required to attend and give evidence thereof. The judgment debtor may also be required to attend for the purpose of giving information respecting his property and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

History.

I.C., § 11-717, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Construction and purpose.

Proceedings against garnishee.

Construction and Purpose.

Statute awards to third party no right to order of delivery, but only right that when order is made, his rights shall be protected; in other words, court takes over property not for protection of claimant but for protection of moving creditor, meanwhile seeing to it that claimant's interests are duly guarded. Sullivan v. Mabey, 45 Idaho 595, 264 P. 233 (1928).

Proceedings Against Garnishee.

While the court may direct garnishee to submit to an examination with respect to indebtedness claimed and may, by proper order, authorize plaintiff to commence an action against garnishee, and restrain him, pending action, from transferring or disposing of his interest in debt in case

he denies indebtedness, it can not direct entry of judgment against garnishee without allowing him a hearing upon issue so raised. Lindenthal v. Burke, 2 Idaho 571, 21 P. 419 (1889).

§ 11-718. Debts owing by state of Idaho subject to execution or garnishment after judgment. — (1) Debts, moneys and credits due or owing by the state of Idaho to any person whomsoever, except an elective official of the state of Idaho, shall be subject to execution and garnishment after final judgment against such person for the satisfaction of such judgment by service by the sheriff of the debtor's county of residence in Idaho, upon the state controller of a copy of the writ of execution and a notice of garnishment signed by such officer in duplicate. The state controller shall at the time of such service collect a fee of ten dollars ($10.00) therefor from said officer. The state controller shall thereafter have a period of thirty (30) days in which to answer said notice of garnishment. The state controller shall pay, in the usual manner provided by law to the officer serving said writ of execution and notice of judgment, the amount necessary to satisfy said judgment excluding any exemption as provided by law. The officer's receipt therefor shall be a sufficient release of the state of Idaho and the state controller, of said claim of such person.

(2) The tax refund of any taxpayer may be subject to execution and garnishment under this section. In the case of garnishment of a tax refund due to a taxpayer, the plaintiff or his attorney shall provide in the written instructions to the Ada county sheriff the full name and social security number of the taxpayer subject to the garnishment, that shall be served with the writ of execution and notice of garnishment. The Ada county sheriff, state controller and state tax commission shall cooperate as necessary, including the sharing of garnishee information, in order to carry out the garnishment of a tax refund as provided in this section.

(3) Notwithstanding any provision in this title to the contrary, in the case of garnishment of a tax refund due to a taxpayer, the state controller shall hold the writ for a period of one hundred fifty (150) days after service or until the date it is determined that a refund is due the taxpayer, whichever occurs first, at which time the state controller shall thereafter have a period of thirty (30) days in which to answer such notice of garnishment. The Ada county sheriff shall file a return on the writ as soon as practicable after receipt of the state controller's answer, but if no answer is received from the

state controller by one hundred ninety (190) days after service, the sheriff shall file a final return to that effect and close the garnishment.

History.

I.C., § 11-718, as added by 2017, ch. 303, § 9, p. 799.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State tax commission, § 63-101.

§ 11-719. Answer to interrogatories — Judgment against garnishee. — Upon a copy of the interrogatories being served upon him, the garnishee shall make full and true answer to the same under oath and filed in the cause within five (5) days thereafter. If he fails to do so, the judgment creditor may take judgment against him by default, or the court may, upon motion, compel him to answer by attachment. But no final judgment shall be rendered against the garnishee until there shall be a final judgment against the judgment debtor; nor shall judgment be rendered for a greater amount than the debt claimed by the judgment creditor with interest and costs, nor for a greater amount than the garnishee shall appear to be liable for to the judgment debtor; nor shall execution issue against a garnishee until the maturity of his debt to the judgment debtor.

History.

I.C., § 11-719, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Default defined.

Judgment against defendant.

Judgment against garnishee.

Default Defined.

The default provided for in this section does not mean a default judgment or that judgment may be rendered against garnishee for amount claimed by plaintiff to be due from garnishee to defendant, but is a mere declaration that garnishee failed to appear and answer. Eagleson v. Rubin, 16 Idaho 92, 100 P. 765 (1909).

Judgment Against Defendant.

No valid judgment may be entered against garnishee defendant until judgment has been entered against defendant in main action. First Nat'l Bank v. Drew, 37 Idaho 470, 216 P. 1034 (1923).

Judgment Against Garnishee.

Where judgment recited that garnishee denied indebtedness to defendant and did not show exception by plaintiff to garnishee's answer, and garnishee's answer or plaintiff's exception does not appear in record, there was no issue upon which judgment could be rendered against garnishee. Twin Falls Realty Co. v. Brune, 45 Idaho 579, 264 P. 382 (1928).

§ 11-720. Exception to answer — Amendment. — The judgment creditor may except to the answer of the garnishee for insufficiency, and if adjudged insufficient, the court may allow him to amend it in such time and on such terms as shall be just.

History.

I.C., § 11-720, as added by 2017, ch. 303, § 9, p. 799.

§ 11-721. Denial of answer — Replication — Trial, judgment and execution. — The judgment creditor may deny the answer of the garnishee in whole or in part without oath, and allege specially the grounds upon which a recovery is sought against the garnishee, to which the garnishee may reply either generally or specially, and the issue presented by such denial and reply, shall be tried as ordinary issues between judgment creditor and judgment debtor, and judgment rendered thereon and execution issued accordingly except as herein otherwise provided.

History.

I.C., § 11-721, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Application of Section.

Transfer of stock by cooperative nonprofit association to its members could be attacked in garnishment proceedings against members on ground of fraud, since purpose of this section is that all issues should be adjudicated in proceeding incident to main action to avoid a multiplicity of suits. Associated Fruit Co. v. Idaho-Oregon Fruit Growers' Ass'n, 44 Idaho 200, 256 P. 99 (1927).

Court has right to require garnishee to appear for examination but has no authority to render judgment against him without opportunity given him to contest his liability upon hearing on issue legally raised as provided by statute. Twin Falls Realty Co. v. Brune, 45 Idaho 579, 264 P. 382 (1928).

§ 11-722. Judgment on answer — Costs and allowances. — If the answer of the garnishee be not excepted to, or denied within three (3) days after its filing, unless the court, or judge in vacation, for good cause shown, gives longer time, it shall be taken to be true and sufficient, and if in such case any indebtedness or liability is admitted, judgment shall be rendered accordingly, and the garnishee shall be allowed a reasonable sum out of the funds or property confessed in his hands for his trouble and expense in answering. If all liability is denied, and the denial is uncontroverted, the garnishee shall be discharged at the cost of the judgment creditor. In contested cases the costs shall be adjudged as in ordinary cases between judgment creditor and judgment debtor.

History.

I.C., § 11-722, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Construction.

Extension of time prior to default.

Judgment unauthorized.

No issue joined.

Construction.

This section authorizes entry of judgment against garnishee only if there is unconditional and unqualified admission of indebtedness from garnishee to defendant. Blackaby v. Dunning, 40 Idaho 20, 232 P. 566 (1924).

Extension of Time Prior to Default.

Until the default of garnishee for want of an answer is filed, court possesses power to permit answer to be made or to extend or enlarge time to plead. Eagleson v. Rubin, 16 Idaho 92, 100 P. 765 (1909).

Judgment Unauthorized.

Where there is no showing in record that garnishee was served with due notice of motion for judgment, entry of judgment against him is unauthorized. Blackaby v. Dunning, 40 Idaho 20, 232 P. 566 (1924).

No Issue Joined.

Where there is nothing in judgment to show that plaintiff excepted to or denied answer of garnishee, denying liability, and where neither answer of garnishee or exception or denial thereof appears in record, there is no issue before court upon which it could render judgment against garnishee. Twin Falls Realty Co. v. Brune, 45 Idaho 579, 264 P. 382 (1928).

§ 11-723. Judgment against garnishee. — If the garnishee admits in his answer that he is indebted to the judgment debtor, or has money or property of the judgment debtor in his hands, or under his control, and fails or refuses to turn the same over to the officer as in section 11-716, Idaho Code, provided, the judgment creditor may move the court out of which the writ issued, on or before the return day thereof, for judgment against the garnishee for the amount of such admitted debt, or for the delivery to the officer of the money or property of the judgment debtor in his hands, to an amount sufficient to satisfy the judgment creditor's claim; serving the garnishee with due notice of the said motion; and at the hearing thereof the court shall render such judgment as shall be conformable to law and the facts shown to exist.

History.

I.C., § 11-723, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Mode of Assignment.

In the absence of statutory provisions prescribing mode of assignment, no particular method or form is necessary to effect a valid assignment of property, claims, or debts, so as to defeat garnishment proceedings by a creditor or assignor; if the intent of the party to effect an assignment be clearly established, it is sufficient. Porter v. Title Guar. & Sur. Co., 21 Idaho 312, 121 P. 548 (1912).

§ 11-724. Allegation of assignment of debt — Procedure. — If the garnishee shall allege in his answer that he is indebted to the judgment debtor, but declare his belief under oath that the debt has been assigned to some other person, while naming such person, and the judgment creditor shall file a reply, denying the fact, or the force and validity of the alleged assignment, the court shall thereupon make an order requiring the alleged assignee to appear, on a day to be therein named, and show cause why the alleged assignment should not be disregarded. Such order shall be served upon the supposed assignee, if within the jurisdiction of the court, at least fifteen (15) days before the return day thereof. But, if he cannot be found, or is out of the jurisdiction of the court, he may be brought in by publication as in other civil cases; provided, that the order shall be published instead of the summons, and that such publication need only be made for three (3) weeks successively, and that the last insertion thereof need not be more than fifteen (15) days before the return day thereof.

History.

I.C., § 11-724, as added by 2017, ch. 303, § 9, p. 799.

§ 11-725. Allegation of assignment of debt — Trial of issue. — Upon the return day of the order of notice, or upon such other day to which the trial may be postponed, if the alleged assignee fails to appear, or appearing, fails to assert any claim as such assignee, the alleged assignment shall be disregarded, but if he shall appear and set up a claim as assignee, the existence, force and validity of the alleged assignment shall be tried as similar issues between judgment creditor and judgment debtor, and such judgment shall be rendered as shall be conformable to the facts and the law.

History.

I.C., § 11-725, as added by 2017, ch. 303, § 9, p. 799.

§ 11-726. Liability of garnishee on negotiable paper. — The garnishee shall not be held liable on any debt due upon negotiable paper unless such paper is delivered up to him, or he is fully exonerated or indemnified against any liability thereon after he may have satisfied the judgment. But if it shall be made to appear to the satisfaction of the court in which the proceedings are pending, that the paper is in the possession or control of the judgment debtor, he may be compelled to produce it by attachment.

History.

I.C., § 11-726, as added by 2017, ch. 303, § 9, p. 799.

§ 11-727. Liability of officers and executors as garnishees. — No sheriff, constable, or other officer charged with the collection of money shall, prior to the return day of the execution upon which the same may be made, be liable to be summoned as a garnishee, nor shall any county collector or municipal corporation or any officer thereof, nor administrator or executor of any estate, prior to the allowance of a demand found to be due by his estate, or prior to an order of distribution or for the payment of debts and legacies, be liable in their official capacities as garnishee.

History.

I.C., § 11-727, as added by 2017, ch. 303, § 9, p. 799.

§ 11-728. Fee for employer — Garnishee. — When the garnishee is the employer of the judgment debtor, the garnishee may deduct a onetime fee to cover the costs associated with administering the garnishment. The fee to be deducted shall not exceed ten dollars ($10.00) and shall be deducted from the employer's first answer to the writ from money remitted to the sheriff.

History.

I.C., § 11-728, as added by 2017, ch. 303, § 9, p. 799.

§ 11-729. Sheriff fee for service. — (1) The board of county commissioners of each respective county shall have the power to set sheriff's fees by resolution of the board for serving an initial order of garnishment and writ of execution. The board may also set an additional lesser fee for making an interim return on a continuing garnishment to show disbursement of moneys held by the sheriff for return service, including for receiving and paying over money from any money garnishment, and including wage garnishment or financial institution garnishment. These fees shall be established using criteria determined by the board not to exceed actual costs directly incurred for order of garnishment and writ of execution service.

(2) At the time of adoption of the resolution establishing any fee authorized in this section, the board shall annually publish on the county website all the criteria used to establish the total fee and the value of each criterion's proportionate share of the total fee. The initial garnishment and continuing service fee herein allowed shall be collected from the judgment debtor.

History.

I.C., § 11-729, as added by 2017, ch. 303, § 9, p. 799.

§ 11-730. Appeals in garnishment proceedings. — Appeals may be taken, heard and determined in cases arising under sections 11-708, 11-711, 11-716, 11-719 through 11-727, and 11-731, Idaho Code, in the same manner and with like effect as is now, or may hereafter be, provided by law for appeals in ordinary civil actions.

History.

I.C., § 11-730, as added by 2017, ch. 303, § 9, p. 799.

CASE NOTES

Right to Appeal.

Fact that respondent was not named as a party to the main proceedings, to which the garnishment proceedings were ancillary, is immaterial. Hanson v. Weniger, 31 Idaho 540, 173 P. 1085 (1918).

No appeal can be taken by garnishee defendant until judgment has been entered against him. First Nat'l Bank v. Drew, 37 Idaho 470, 216 P. 1034 (1923).

§ 11-731. Application of preceding sections. — The provisions of sections 11-708, 11-711, 11-716, 11-719 through 11-727, and 11-730, Idaho Code, inclusive, shall apply to all courts of competent jurisdiction.

History.

I.C., § 11-731, as added by 2017, ch. 303, § 9, p. 799.

Licensed to the People of Idaho, Public Resource

Title 12
COSTS AND MISCELLANEOUS MATTERS IN CIVIL ACTIONS

Chapter

Chapter 1. Costs, §§ 12-101 — 12-123.
Chapter 2. Proceedings Against Joint Debtors. [Repealed.]
Chapter 3. Interest on Offers of Settlement, §§ 12-301 — 12-303.
Chapter 4. Motions and Orders. [Repealed.]
Chapter 5. Service of Papers, Notice and Appearance. [Repealed.]
Chapter 6. General Provisions, §§ 12-601 — 12-616.

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Chapter 1
COSTS

Sec.

12-101. Costs.

12-102 — 12-106. [Repealed.]

12-107. Costs on appeal.

12-108 — 12-113. [Repealed.]

12-114. Taxation of costs on appeal in Supreme Court.

12-115. Insertion of costs in judgment. [Repealed.]

12-116. Assignment of jury costs.

12-117. Attorney's fees, witness fees and expenses awarded in certain instances.

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12-119. Costs against a county — How paid.

12-120. Attorney's fees in civil actions.

12-121. Attorney's fees.

12-122. Attorney's fees in habeas corpus actions.

12-123. Sanctions for frivolous conduct in a civil case.

§ 12-101. Costs. — Costs shall be awarded by the court in a civil trial or proceeding to the parties in the manner and in the amount provided for by the Idaho Rules of Civil Procedure.

History.

I.C., § 12-101, as added by 1977, ch. 4, § 1, p. 9.

STATUTORY NOTES

Cross References.

Abstract of title, cost of, § 6-547.

Arbitration costs to be provided for in award unless otherwise provided, § 7-910.

Attachment, necessity of written undertaking by plaintiff, § 8-503.

Attorney's fees, lien, § 3-205.

Change of venue, cost of filing papers anew, § 5-408.

Civil arrest, undertaking for costs, § 8-105.

Declaratory judgment proceedings, costs in, § 10-1210.

Deposition, fee for taking to be taxed as costs, Idaho R. Civ. P. 54(d)(1).

Disclaimer in actions to quiet title, § 6-402.

Divorce on ground of insanity, costs to be paid by plaintiff, § 32-805.

Election contests, liability for costs, § 34-2020.

Eminent domain proceedings, costs in, § 7-718.

Expense of securing surety company bond may be taxed as costs, § 41-2607.

Fees of witnesses voluntarily attending, § 9-1601.

Garnishment, costs and allowances, § 8-515.

Husband not chargeable with costs of wife's suit, § 5-304.

Interpreters' fees not taxable costs, § 9-1603.

Log liens, filing and attorney's fees allowed as costs in suits to enforce, § 45-413.

Lost papers, how supplied, Idaho R. Civ. P. 10(a)(2).

Mandate, costs in action for, § 7-312.

Mechanic's lien cases, recorder's and attorney's fees allowed as costs in, § 45-513.

Offer of judgment rejected, costs limited, Idaho R. Civ. P. 68.

Partition, expenses of referees and surveyors, § 6-517; apportionment of costs to parties, § 6-545; cost of abstract to be taxed against parties, § 6-547.

Procedures regarding costs, Idaho R. Civ. P. 54(d)(1) to 54(d)(6).

Quieting title, costs not allowed when defendant disclaims title, § 6-402.

Railroad killing stock, recovery of attorney's fees in actions against, § 62-409.

Reporter's fees as costs, § 1-1105.

Rights of way for mining purposes, costs in actions to condemn, § 47-912.

Usurpation of office, costs in action for, § 6-608.

Witnesses and interpreters, fees, §§ 9-1601, 9-1603 to 9-1605.

Prior Laws.

Former § 12-101 which comprised C.C.P. 1881, § 696; R.S. & R.C., § 4900; am. 1911, ch. 167, § 1, p. 563; reen. C.L., § 4900; C.S., § 7206; I.C.A., § 12-101 regarding parties entitled to costs was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

Effective Dates.

Section 2 of S.L. 1977, ch. 4 declared an emergency. Approved February 15, 1977.

CASE NOTES

Action against barber examiners.

Award under environmental protection and health act.

Special masters.

Action Against Barber Examiners.

Where apprentice barber successfully brought suit against the state board of barber examiners and won the right to be reexamined without additional schooling after he had failed the practical portion of the barber examination due to severe chest pains, it was within the trial court's discretion to award costs pursuant to this section and attorney fees pursuant to § 12-121. Rickel v. Board of Barber Exmrs., 102 Idaho 260, 629 P.2d 656 (1981).

Award Under Environmental Protection and Health Act.

The legislature has made it clear that an award of expenses under the Environmental Protection and Health Act (§ 39-101 et seq.) is mandatory and unqualified, stating that a person who violates the act "shall be liable for any expense." By using the term "any expense" rather than "costs", the legislature apparently intended a more extensive recovery of costs than is contemplated by this section and Idaho R. Civ. P. 54(d)(1). For this reason, the trial court should consider a request for costs according to § 39-108(6), rather than Idaho R. Civ. P. 54(d)(1). Idaho Dep't of Health & Welfare v. Southfork Lumber Co., 123 Idaho 146, 845 P.2d 564 (1993).

Special Masters.

State was not entitled to a writ of prohibition to enjoin a district court from assessing fees for a special master against the state because the appointment of special masters and the assessment of special master costs were matters within the discretion of the district courts. Clear statutory authority existed for the award of such fees, as well direction as to how costs awarded against the state were to be paid. State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

Cited Gem State Homes, Inc. v. Idaho Dep't of Health & Welfare, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987); Agrodyne, Inc. v. Beard, 114 Idaho 342, 757 P.2d 205 (Ct. App. 1988); Caldwell v. Idaho Youth Ranch, Inc., 132 Idaho 120, 968 P.2d 215 (1998); Sanders v. Bd. of Trs. of the Mt. Home Sch. Dist. No. 193, 156 Idaho 269, 322 P.3d 1002 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 1 et seq.

C.J.S. — 20 C.J.S., Costs, § 1 et seq.

§ 12-102. Allowance to plaintiff. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 698; R.S., R.C., & C.L., § 4901; C.S., § 7207; I.C.A., § 12-102, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(d)(1).

§ 12-103. Several actions on single cause. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 692; R.S., R.C., & C.L., § 4902; C.S., § 7208; I.C.A., § 12-103, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule. see Idaho R. Civ. P. 54(d)(2).

§ 12-104. Allowance to defendant. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 695; R.S., R.C., & C.L., § 4903; C.S., § 7209; I.C.A., § 12-104, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(d)(1).

§ 12-105. Discretionary allowance. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 696; R.S., R.C., & C.L., § 4904; C.S., § 7210; I.C.A., § 12-105, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(d)(1).

§ 12-106. Severance of costs. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 697; R.S., R.C., & C.L., § 4905; C.S., § 7211; I.C.A., § 12-106, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(d)(1).

§ 12-107. Costs on appeal. — In the following cases the costs of appeal are in the discretion of the courts:

1. When a new trial is ordered.

2. When a judgment is modified. In all other cases the prevailing party shall recover costs, including his costs below when the appeal is to the district court.

History.

C.C.P. 1881, § 698; R.S., R.C., & C.L., § 4906; C.S., § 7212; I.C.A., § 12-107.

STATUTORY NOTES

Cross References.

Appeals from district courts, § 13-201 et seq.

Supreme court, costs of appeal to, § 12-114.

Taxation of costs on appeal, Idaho App. R. 40.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Application of this section.

Probate or justice's court.

State as a party.

Worker's compensation.

Application of this Section.

This section does not apply to actions involving the state. Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952).

Probate or Justice's Court.

Where an action is commenced in probate or justices' court, and judgment is given for plaintiff and defendant appeals to district court, even though the judgment of the lower court be reduced, it will carry costs against defendant. Lovel v. Joyce, 9 Idaho 386, 74 P. 1073 (1903) (probate and justices' courts abolished by S.L. 1969, ch. 10).

State as a Party.

This section does not apply to state where it is a party in its governmental capacity, as in railroad freight rate proceeding before public utilities commission. Chicago, M. & St. P. Ry. v. Public Utils. Comm'n, 47 Idaho 346, 275 P. 780 (1929).

Worker's Compensation.

Former § 72-611 (repealed, see now § 72-804) concerning costs in workmen's [now worker's] compensation cases, was not intended to supersede general provisions for taxation of costs. Brady v. Place, 41 Idaho 753, 243 P. 654 (1926).

Cited Berry v. Koehler, 84 Idaho 170, 369 P.2d 1010 (1961); Aero Serv. Corp. W. v. Benson, 84 Idaho 416, 374 P.2d 277 (1962); Gem State Homes, Inc. v. Idaho Dep't of Health & Welfare, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 88 et seq.

C.J.S. — 20 C.J.S., Costs, § 178 et seq.

§ 12-108. Fees of referees. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 699; R.S., R.C., & C.L., § 4907; C.S., § 7213; I.C.A., § 12-108, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 53(a)(1).

§ 12-109. Costs of continuance. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 700; R.S., R.C., & C.L., § 4908; C.S., § 7214; I.C.A., § 12-109, was repealed be S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(d)(3).

§ 12-110. Costs in case of tender. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 701; R.S., R.C., & C.L., § 4909; C.S., § 7215; I.C.A., § 12-110, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-111. Actions by or against fiduciaries. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 702; R.S., R.C., & C.L., § 4910; C.S., § 7216; I.C.A., § 12-111, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-112. Costs on review of special proceedings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.C., R.S., & C.L., § 4911; C.S., § 7217; I.C.A., § 12-112, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-113. Taxation of costs. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 703; R.S., § 4912; am. 1895, p. 6, § 1; reen. 1899, p. 231, § 1; reen. R.C. & C.L., § 4912; C.S., § 7218; I.C.A., § 12-113, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 54(d)(5).

§ 12-114. Taxation of costs on appeal in Supreme Court. — Whenever costs are awarded to a party by an appellate court, if he claims such costs he must tax the same before the clerk of the Supreme Court, subject to exception and review by the Supreme Court or the judges thereof, within such time and subject to such regulations as the Supreme Court shall by rule direct, and the same when taxed shall be certified by the clerk of the Supreme Court to the clerk of the court from which the appeal was taken, to be there entered as a judgment and to be enforced by execution as in the case of other judgments.

History.

C.C.P. 1881, § 704; R.S., & R.C., § 4913; am. 1911, ch. 204, § 1, p. 673; reen. C.L., § 4913; C.S., § 7219; I.C.A., § 12-114.

STATUTORY NOTES

Cross References.

Costs in the discretion of the court, § 12-107.

Enforcement of judgments, § 11-101 et seq.

Taxation of costs, Idaho App. R. 40.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975. See Idaho App. R. 40.

CASE NOTES

Costs against state.

Judgment and execution.

Printed transcript.

Rehearing denied.

Costs Against State.

This section authorizes the allowance of costs to a successful plaintiff in an appeal by the former state tax collector and acting state tax collector to the supreme court from a judgment against them for refund of taxes paid by the plaintiff under protest as to their legality. American Oil Co. v. Neill, 90 Idaho 333, 414 P.2d 206 (1966), overruled on other grounds, County of Ada v. Red Steer Drive-Ins of Nev., Inc., 101 Idaho 94, 609 P.2d 161 (1980).

Judgment and Execution.

Assignee of cost bill, on which execution may be issued, takes it subject to any right of offset against such cost bill existing at time of assignment. Northwestern & Pac. Hypotheek Bank v. Rauch, 8 Idaho 50, 66 P. 807 (1901).

Costs taxed by the supreme court under this section become part of judgment, and lower court is without authority to modify them. Mountain Home Lumber Co. v. Swartwout, 33 Idaho 737, 197 P. 1027 (1921).

Supreme court having awarded costs to appellant on appeal from order denying motion to set aside execution sale, it became duty of clerk of district court to enter judgment against all adverse parties. Federal Land Bank v. Curts, 49 Idaho 624, 290 P. 402 (1930).

Printed Transcript.

Appellate court will allow costs to be taxed for a printed transcript at rate fixed by rule of court. Ulbright v. Baslington, 20 Idaho 546, 119 P. 294 (1911).

Rehearing Denied.

When rehearing is denied, former Supreme Court Rule 58 (see Idaho R. Civ. P. 59.1) required the remittitur to issue forthwith and the judgment of the district court carrying into effect the provisions for costs follows as a matter of course. Fite v. French, 54 Idaho 104, 30 P.2d 360 (1934).

Cited Henderson v. Cominco Am., Inc., 95 Idaho 690, 518 P.2d 873 (1973); Gem State Homes, Inc. v. Idaho Dep't of Health & Welfare, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987); State v. Stradley, 127 Idaho 203, 899 P.2d 416 (1995).

§ 12-115. Insertion of costs in judgment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 705; R.S., R.C., & C.L., § 4914; C.S., § 7220; I.C.A., § 12-115, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule regarding entry of judgment, see Idaho R. Civ. P. 58(a).

§ 12-116. Assignment of jury costs. — (1) If a civil action is settled by the parties involved therein within twenty-four (24) hours of the time for which the civil action is scheduled for trial, and/or notice of settlement is not given to the court at least twenty-four (24) hours before the scheduled trial time, the court may, based upon the circumstances of such settlement, assess and apportion as costs between and among the parties to the action, in the sound discretion of the court, all jury fees and expenses incurred by the county arising from impaneling or furnishing jurors for the civil action.

(2) The costs provided for in subsection (1) of this section shall be in addition to any costs which may be assessed pursuant to the Idaho rules of civil procedure.

(3) Moneys collected by the court pursuant to this section shall be deposited in the county treasury from which the jurors were paid.

History.

I.C., § 12-116, as added by 1985, ch. 217, § 1, p. 527.

STATUTORY NOTES

Prior Laws.

Former § 12-116, which comprised C.C.P. 1881, § 706; R.S., R.C., & C.L., § 4915; C.S., § 7221; I.C.A., § 12-116, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present law, see Idaho R. Civ. P. 54(d)(4).

§ 12-117. Attorney's fees, witness fees and expenses awarded in certain instances. — (1) Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

(2) If a party to a proceeding prevails on a portion of the case, and the state agency or political subdivision or the court hearing the proceeding, including on appeal, finds that the nonprevailing party acted without a reasonable basis in fact or law with respect to that portion of the case, it shall award the partially prevailing party reasonable attorney's fees, witness fees and other reasonable expenses with respect to that portion of the case on which it prevailed.

(3) Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision. If sufficient funds are not available in the budget of the state agency, the expenses shall be considered a claim governed by the provisions of section 67-2018, Idaho Code. If sufficient funds are not available in the budget of the political subdivision, the expenses shall be considered a claim pursuant to chapter 9, title 6, Idaho Code. Every state agency or political subdivision against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

(4) In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. For purposes of this subsection, "governmental entity" means any state agency or political subdivision.

(5) Notwithstanding any other provision of law, in any administrative proceeding or administrative judicial proceeding involving as adverse parties a licensing authority and a licensee, the prevailing party shall be entitled to recover its reasonable attorney's fees and reasonable investigative or defense costs, as the case may be, necessarily and actually incurred. "Prevailing party," for the purpose of this subsection, means a party that prevailed on the claims or allegations that constituted the gravamen of the claims and allegations as a whole. An assessment of fees and costs made pursuant to this section is subject to judicial review. Notwithstanding any other provision of law, the failure of a licensee to pay an award of costs or attorney's fees awarded under this subsection shall not be deemed a violation of a licensure requirement, as long as the licensee is in compliance with a payment arrangement made with the licensing authority.

(6) For purposes of this section:

(a) "Licensee" means any person holding a license, registration, certificate, permit or other authorization to practice a profession or occupation.

(b) "Licensing authority" means any agency, bureau, commission, department, division, or professional or occupational licensing board charged with granting, suspending or revoking the license, certificate, registration, permit or other authorization of any person to practice a profession or occupation.

(c) "Person" means any individual, partnership, limited liability partnership, corporation, limited liability company, association or any other private organization.

(d) "Political subdivision" means a city, a county, any taxing district or a health district.

(e) "Proceeding" means any administrative proceeding, administrative judicial proceeding, civil judicial proceeding or petition for judicial review or any appeal from any administrative proceeding, administrative judicial proceeding, civil judicial proceeding or petition for judicial review.

(f) "State agency" means any agency as defined in section 67-5201, Idaho Code.

(7) If the amount pleaded in an action by a person is twenty-five thousand dollars ($25,000) or less, the person must satisfy the requirements of section 12-120, Idaho Code, as well as the requirements of this section before he or she may recover attorney's fees, witness fees or expenses pursuant to this section.

History.

I.C., § 12-117, as added by 1984, ch. 204, § 1, p. 501; am. 1993, ch. 216, § 1, p. 587; am. 1994, ch. 36, § 1, p. 55; am. 2000, ch. 241, § 1, p. 675; am. 2010, ch. 29, § 1, p. 49; am. 2012, ch. 149, § 1, p. 419; am. 2018, ch. 348, § 1, p. 795; am. 2019, ch. 212, § 1, p. 643.

STATUTORY NOTES

Prior Laws.

Former § 12-117, which comprised C.C.P. 1881, § 707; R.S., R.C., & C.L., § 4916; C.S., § 7222; I.C.A., § 12-117, regarding the effect of failure to give security for costs, was repealed by S.L. 1975, ch. 242, § 1. For present law, see Idaho R. Civ. P. 54(d)(4).

Amendments.

The 2010 amendment, by ch. 29, in subsection (1), inserted "proceeding" following "administrative", substituted "or political subdivision and a person, the state agency or political subdivision or the court, as the case may be" for "a city, a county or other taxing district and a person, the court" and "and other reasonable expenses if it finds that the nonprevailing party" for "and reasonable expenses, if the court finds that the party against whom the judgment is rendered"; rewrote subsection (2), which formerly read: "If the prevailing party is awarded a partial judgment and the court finds the party against whom partial judgment is rendered acted without a reasonable basis in fact or law, the court shall allow the prevailing party's attorney's fees, witness fees and expenses in an amount which reflects the person's partial recovery"; in subsection (3), substituted "or political subdivision" for "city, county or other taxing district" and for "the city, the county or the

taxing district" in the first sentence, substituted "political subdivision" for "city, county or taxing district" and substituted "or political subdivision" for "city, county or taxing district" in the third sentence; added paragraph (4)(b); and redesignated former paragraph (4)(b) as paragraph (4)(c).

The 2012 amendment, by ch. 149, deleted "administrative proceeding or civil judicial" or similar language preceding "proceeding" near the beginning of subsections (2) and (3); substituted "hearing the proceeding, including on appeal" for "as the case may be" in subsections (2) and (3); added subsection (4), renumbering the subsequent subsections accordingly; in subsection (5), inserted "limited liability partnership" and "limited liability company" in paragraph (a), added "or a health district" in paragraph (b), added paragraph (c), and redesignated former paragraph (c) as paragraph (d); and substituted "twenty-five thousand dollars ($25,000)" for "two thousand five hundred dollars ($2,500)" in subsection (6).

The 2018 amendment, by ch. 348, inserted subsection (5), and redesignated the subsequent subsections accordingly; and, in present subsection (6), inserted present paragraphs (a) and (b), and redesignated the subsequent paragraphs accordingly.

The 2019 amendment, by ch. 212, inserted "agency, bureau, commission, department, division, or" in paragraph (6)(b).

Compiler's Notes.

The words "this act" in subsection (3) refer to S.L. 1984, ch. 204, which is codified as this section.

S.L. 2018, Chapter 348 became law without the signature of the governor.

Effective Dates.

Section 2 of S.L. 2000, ch. 241 provided: "This act shall be in full force and effect on and after July 1, 2000, and shall apply to all administrative or civil actions filed on and after the effective date of this act."

Section 2 of S.L. 2010, ch. 29 declared an emergency retroactively to May 31, 2009, and shall apply to all cases filed and pending as of June 1, 2009. Approved March 4, 2010.

Section 2 of S.L. 2012, ch. 149 declared an emergency. Approved March 27, 2012.

CASE NOTES

2010 amendment.

Administrative appeal.

Adverse parties.

Agency action.

Applicability.

Application.

Attorney's fees.

Award by court.

Case of first impression.

Costs not recoverable.

Fees awarded.

Fees not allowed.

Improper award.

Intervening party.

Political subdivision.

Prevailing party.

Pro se.

Purpose.

Remand.

Standard of review.

State agency.

2010 Amendment.

Under the 2010 amendment of this section, courts may not award fees in a review of administrative decisions, but agencies may now award fees during administrative proceedings. Sopatyk v. Lemhi County, 151 Idaho 809, 264 P.3d 916 (2011) (see 2012 amendment).

Administrative Appeal.

In a nursing facility's action seeking reimbursement for property costs when the department of health and welfare erroneously applied the occupancy adjustment factor to the nursing facility's property taxes, because the department's arguments were not without a reasonable basis in fact or law, the nursing facility's request for attorney's fees on appeal was denied. Hillcrest Haven Convalescent Ctr. v. Idaho Dep't of Health & Welfare, 142 Idaho 123, 124 P.3d 999 (2005).

Subsection (1) does not allow a court to award attorney's fees on judicial review of an administrative decision. St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 150 Idaho 484, 248 P.3d 735 (2011).

Adverse Parties.

In a dispute involving an application to amend a county comprehensive plan, an applicant and two other parties were not entitled to attorney fees under this section, because they were not "adverse" to the county, as the county's only involvement in the appeal was to waive any objection to a motion to dismiss and to waive any claim to attorney fees. Neighbors for Responsible Growth v. Kootenai County, 147 Idaho 173, 207 P.3d 149 (2009).

There is no statutory basis for a court to award attorney fees incurred during an administrative proceeding. A court may only make such an award for fees incurred in the judicial appeal of an administrative determination. Rammell v. Idaho State Dep't of Agric., 147 Idaho 415, 210 P.3d 523 (2009) (superseded by 2010 and 2012 amendments).

Agency Action.

A petition for judicial review of an agency action is neither an administrative proceeding nor a civil judicial proceeding, so subsection (1) of this section does not enable the courts to award attorney fees to either party. Laughy v. Idaho DOT, 149 Idaho 867, 243 P.3d 1055 (2010) (see 2010, 2012, and 2019 amendments).

Applicability.

This section does not apply to actions in which the board of correction is a party. Needs v. Idaho State Dep't of Cor., 115 Idaho 399, 766 P.2d 1280 (Ct. App. 1988).

The court may not award attorney fees and costs against the Idaho department of correction under this section. Idaho Dep't of Corr. v. Anderson, 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000).

School districts are "taxing districts" for purpose of this section. Potlatch Educ. Ass'n & Doug Richards v. Potlatch Sch. Dist., 148 Idaho 630, 226 P.3d 1277 (2010).

This section does not provide an exception to the exclusive scope of § 6-918A. Block v. City of Lewiston, 156 Idaho 484, 328 P.3d 464 (2014).

Application.

This section provides statutory authority on which to base an award of attorney fees in a real property forfeiture action brought by the department of law enforcement pursuant to § 37-2744A. Idaho Dep't of Law Enforcement ex rel. Cade v. Kluss, 125 Idaho 682, 873 P.2d 1336 (1994).

Trial court abused its discretion in denying attorney fees pursuant to this section for a partial judgment declaring a conflict between a statute and an administrative rule. Roe v. Harris, 128 Idaho 569, 917 P.2d 403 (1996).

Comparing the private attorney general doctrine with this section, the private attorney general doctrine considers the value of the prevailing party's contribution, while this section considers the character of the losing party's case. This difference evidences a legislative intent to make the standard of this section the basis for an attorney fee award against a state agency, rather than the tests encompassed under the private attorney general doctrine. Idaho Watersheds Project, Inc. v. State Bd. of Land Comm'rs, 128 Idaho 761, 918 P.2d 1206 (1996).

The standard for awarding attorney fees under this section requires focusing on the overall action of the agency, not just preliminary matters; thus, where the district court appeared to have incorrectly focused on the initial stage of applicant's denial of registration to sell securities and not the eventual denial, denial of attorney fees was vacated and remanded for

application of the proper standard and with directions to consider awarding attorney fees for this appeal if they are awarded on remand. Rincover v. State, Dep't of Fin., 129 Idaho 442, 926 P.2d 626 (1996).

County personnel hearing officer in administrative proceeding regarding termination of county paramedic who appealed the termination and was reinstated had authority to award attorney fees to paramedic under this section. Ockerman v. Ada County Bd. of Comm'rs, 130 Idaho 265, 939 P.2d 584 (Ct. App. 1997) (But see heading "Award by Court").

Attorney's Fees.

Landowners challenged a county's designation of roadways as public on an officially-adopted map; on appeal, the landowners sought attorney fees. The trial court did not abuse its discretion in refusing to award attorney fees because, based on the record, it was impossible to conclude the commissioners' decision was made without any reasonable support in fact. Homestead Farms, Inc. v. Bd. of Comm'rs, 141 Idaho 855, 119 P.3d 630 (2005).

Attorney fees were not awarded to a dairy or the Idaho department of water resources when property owners, who were opposed to the transfer of water to the proposed dairy, did not appeal the decision transferring the water without a basis in fact. Chisholm v. State Dep't of Water Res. (In re Transfer No. 5639), 142 Idaho 159, 125 P.3d 515 (2005).

Employment service provider that offered a variety of services to small businesses, including insurance services, was a multiple employer welfare arrangement because it offered health benefits to two or more employers, and it violated the Idaho Code by transacting the business of insurance without a certificate of authority. On appeal, the Idaho department of insurance was entitled to costs only, and not attorney fees, because the case was one of first impression; therefore, it could not be said that the appeal was brought frivolously, unreasonably, and without foundation. Emplrs Res. Mgmt. Co. v. Dep't of Ins., 143 Idaho 179, 141 P.3d 1048 (2006), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Although the appellate court disagreed with the Idaho state board of medicine's sanctions against the doctor, it could not say the board acted

without a reasonable basis in law, given the lack of clarity or standards in the discipline statute; therefore, the court denied the doctor's request for fees. Haw v. State Bd. of Med., 143 Idaho 51, 137 P.3d 438 (2006).

In a case in which a city was the prevailing party in a challenge to a city council's decision to deny a special use permit to erect a 120-foot-tall, lattice transmission tower, the city was entitled to attorney fees. Marcia T. Turner, L.L.C. v. City of Twin Falls, 144 Idaho 203, 159 P.3d 840 (2007).

Because adjoining landowners and their wildlife refuge landowners did not prevail on the appeal of their action seeking an injunction to require state land lessees to comply with local zoning ordinances, the landowners were not entitled to attorney fees. Fenwick v. Idaho Dep't of Lands, 144 Idaho 318, 160 P.3d 757 (2007).

Neither appellee county nor appellee finance company were entitled to an award of attorney fees under either § 12-121 or this section because, as to the former, neither appellee had prevailed on the issue that was appealed, i.e., standing, and, as to the latter, the issue that was appealed was not brought without a reasonable basis in law or fact since appellant taxpayers prevailed on it although, because the matter was moot, the appeal was dismissed. Koch v. Canyon County, 145 Idaho 158, 177 P.3d 372 (2008).

Corporation that sought review of a city's annexation and zoning of property could not be awarded attorney fees because the corporation was not a prevailing party, there was no statute authorizing the corporation's petition for judicial review, and the corporation acted without a reasonable basis in fact or law. Highlands Dev. Corp. v. City of Boise, 145 Idaho 958, 188 P.3d 900 (2008).

Because the issue of standing under the Medical Indigency Act, § 31-3501, et seq., presented a question of first impression under the amended statutes, a county board of commissioners did not act without a reasonable basis in law when it determined that a medical provider lacked standing to appeal the denial of a homeless man's application for benefit. As a result, the medical center was not entitled to attorney fees. Saint Alphonsus Reg'l Med. Cent. v. Ada County (In re Ferdig), 146 Idaho 862, 204 P.3d 502 (2009).

Property owner was not entitled to attorney fees in a suit brought by a husband and a wife challenging a board of county commissioner's decision to authorize rezoning because, although the husband and the wife did not have a statutory right to judicial review of the board's approval of the conditional rezone and corresponding development agreement, they did not pursue an appeal without a reasonable basis in fact or law. Taylor v. Canyon County Bd. of Comm'rs, 147 Idaho 424, 210 P.3d 532 (2009).

Landowner's action against the county was not a civil judicial proceeding, Idaho R. Civ. P. 3(a)(1). Since it was a petition for judicial review of a county commission decision, a proceeding that did not commence with a complaint filed in court, the courts could not award fees. Smith v. Wash. County, 150 Idaho 388, 247 P.3d 615 (2010) (see 2010 and 2012 amendments).

Award by Court.

Award of attorney's fees and costs to the department of agriculture by a presiding officer following an agency hearing was improper, as only a court, and not an administrative officer or agency, can award attorney fees under this section. Rammell v. Idaho State Dep't of Agric., 147 Idaho 415, 210 P.3d 523 (2009) (superseded by 2010 and 2012 amendments).

Case of First Impression.

In a driver's license suspension proceeding, where a father's appeal involved the interpretation of the term "property interest" in § 7-1402(5)(d), and where this issue had never been addressed by an Idaho appellate court, a request for attorney fees, on appeal, by the department of health and welfare was denied because the matter was one of first impression. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

Costs Not Recoverable.

Absent an explicit statutory authorization, costs of transcripts or briefs, incurred by a defendant who successfully prevails on an appeal in a criminal action, are not recoverable against the state. State v. Peterson, 113 Idaho 554, 746 P.2d 1013 (Ct. App. 1987).

Since the costs of a defendant who successfully prevails on an appeal in the criminal action are not recoverable as a matter of law, the state's alleged failure to timely file a formal objection under subsection (d) of Idaho App.

R. 40 did not create any right of recovery under a theory of waiver. State v. Peterson, 113 Idaho 554, 746 P.2d 1013 (Ct. App. 1987).

Where inmate's petition alleged violations of due process at the correctional facility operated by the department of correction, it would have been error for the district court to have awarded fees and costs against the department under this section since the award could have been made only under § 12-121. Needs v. Idaho State Dep't of Cor., 115 Idaho 399, 766 P.2d 1280 (Ct. App. 1988).

Because of the decision that there was no statutory authority under § 67-5279 for the district court to enter a money judgment against county on hospital's indigency benefits claim, hospital could not assert a right to pre- or postjudgment interest, nor was it entitled to attorney fees under this section. University of Utah Hosp. v. Board of Comm'rs, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996).

Fees Awarded.

This section requires an award of reasonable attorney fees merely upon a showing "that the agency acted without reasonable basis in fact or law." Notwithstanding the state was defending a favorable judgment of the district court, the motion to dismiss for lack of jurisdiction was made without a reasonable basis in law or fact, and employee is entitled to an award of attorney fees. Lockhart v. Department of Fish & Game, 121 Idaho 894, 828 P.2d 1299 (1992).

Trial court did not abuse its discretion in awarding attorney fees pursuant to this section in a case where director of department of water resources was ordered by writ of mandate to comply with § 42-602, and ordering that the fees and costs not come out of the Snake River Basin Adjudication account; the court ruled that there was no reasonable basis in law or fact for the director to have refused to comply with § 42-602. Musser v. Higginson, 125 Idaho 392, 871 P.2d 809 (1994).

Plaintiff's request for attorney fees was granted where the board of commissioners acted without a reasonable basis in fact when it granted approval of the preliminary plat after concluding that the plat proposal complied with the applicable ordinance requirements for common open space and proof of ownership, when in fact it did not so comply. Rural

Kootenai Org., Inc. v. Board of Comm'rs, 133 Idaho 833, 993 P.2d 596 (1999).

In appealing the trial court's judgment dismissing his petition seeking judicial review of a school board's decision disciplining his son, the father acted without a reasonable basis in law or in fact; therefore, the school board was awarded attorney fees on appeal pursuant to this section. Daw v. Sch. Dist. 91 Bd. of Trs., 136 Idaho 806, 41 P.3d 234 (2001).

County did not act with a reasonable basis in fact or law where it simply dismissed the residents' appeal with no basis under the ordinance for doing so; when it did, the award of attorney fees to the residents was proper. County Residents Against Pollution from Septage Sludge v. Bonner County, 138 Idaho 585, 67 P.3d 64 (2003).

Costs and attorney fees were awarded to a taxpayer in an appeal from a county assessor's decision to assess property as non-operating after it had already been assessed as operating by the Idaho tax commission because there was no reasonable basis for the decision to include the real property on the tax rolls under § 63-311. The assessment amounted to double taxation. Union Pac. Land Res. Corp. v. Shoshone County Assessor, 140 Idaho 528, 96 P.3d 629 (2004).

County was entitled to attorney fees pursuant to this section where the taxpayers were clearly aware of the statutory procedures, failed to appeal separate appraisals, and were well advised on the applicable law by the district court, but nevertheless chose to appeal. Castrigno v. McQuade, 141 Idaho 93, 106 P.3d 419 (2005).

When the Idaho department of health and welfare brought an action against an estate, in attempt to recover Medicaid benefits, it did not have a cause of action under § 56-218. As such, the estate was entitled to recover attorneys fees under this section because the department acted without statutory authority in presenting its appeal. State, Dept. of Health & Welfare v. Estate of Elliott (In re Estate of Elliott), 141 Idaho 177, 108 P.3d 324 (2005), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Property owner, who opposed the granting of a conditional use permit to a builder, was entitled to attorney fees as the prevailing party; the city

wholly ignored the provision of its avalanche zone district ordinance requiring certification by an Idaho-licensed engineer prior to the granting of a conditional use permit. Fischer v. City of Ketchum, 141 Idaho 349, 109 P.3d 1091 (2005).

Attorney fees were properly awarded to a nonprofit organization in a county's action for an injunction requiring the organization to delete "Sheriff" from its corporate name, where the county did not provide any authority supporting its cause of action, nor could it even define what cause of action it was alleging. Bonner County v. Bonner County Sheriff Search & Rescue, Inc., 142 Idaho 788, 134 P.3d 639 (2006).

Where a county acted without a reasonable basis in denying a medical indigency application because it had no authority to do so without first fulfilling the procedural requirements regarding an investigation, attorney fees were awarded to several health care providers on appeal. University of Utah Hosp. v. Ada County Bd. of Comm'rs, 143 Idaho 808, 153 P.3d 1154 (2007).

District court did not err in awarding the therapist attorney fees where the board of occupational licenses had failed to define personal needs or explain how the therapist was serving such needs, it had ignored its hearing officer's contrary finding, and, as a result, its decision was without basis in fact or law. Ater v. Idaho Bureau of Occupational Licenses, 144 Idaho 281, 160 P.3d 438 (2007), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Award of attorney fees to the city was appropriate where the Idaho supreme court believed the appeal was pursued without reasonable basis in fact or law; the trust's counsel essentially conceded that the appeal was primarily for the purpose of making a point, that any claim for damages was rather tenuous, and the issue was conceded in the trust's brief. Euclid Ave. Trust v. City of Boise, 146 Idaho 306, 193 P.3d 853 (2008).

Highway district was entitled to attorney fees because it was a taxing district pursuant to §§ 40-1308, 63-3101, and property owners' tort, takings, and due process claims arising from highway maintenance lacked a reasonable basis. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, 565 U.S. 826, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Director of the Idaho department of water resources was granted attorney fees, where the owner of a fish research and propagation facility acted without a reasonable basis in fact or law in bringing an appeal: the owner asserted substantially the same arguments on appeal as he did before the district court on judicial review and he failed to add significant new analysis or authority to support his arguments. Rangen, Inc. v. Idaho Dep't of Water Res. (In re Distrib. of Water to Water Right Nos. 36-02551 & 36-07694 (Rangen, Inc.) IDWR Docket CM-DC-2011-004), 159 Idaho 798, 367 P.3d 193 (2016).

Irrigation district was entitled to an award of attorney's fees on appeal, because, despite the appellate court's unambiguous instruction that the matter was limited to one issue on remand, a property owner attempted to argue numerous issues outside of the scope of the remand, and, when the district court correctly identified the scope of remand and limited its judgment to the appellate court's instruction, the owner appealed and attempted to argue issues in front of the appellate court a second time. Morgan v. New Swed. Irrigation Dist., 160 Idaho 47, 368 P.3d 990 (2016).

Fees Not Allowed.

Fees are not allowed under this section unless the court finds in favor of the party seeking them and further determines that the agency acted without a reasonable basis in fact or law, thus where agency prevailed on appeal no fees were awarded. Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

Hospital was not entitled to attorney fees and costs incurred in litigating to determine which of two counties was responsible for medical fees for an indigent patient. IHC Hosps. v. Board of Comm'rs, 117 Idaho 207, 786 P.2d 600 (Ct. App. 1990).

The district court's award of costs and attorney fees was in error where the Idaho state department of Insurance's action involved a reasonable, yet erroneous, interpretation of an ambiguous statute partially because no Idaho appellate cases had applied § 41-1314, and the department had only the statute to guide it. Cox v. Department of Ins., 121 Idaho 143, 823 P.2d 177 (Ct. App. 1991).

Where state medical board did not act without a reasonable basis in law or fact in malpractice action against doctor for violations of § 54-1814, no attorney fees were granted under this section. Krueger v. Board of Professional Discipline, 122 Idaho 577, 836 P.2d 523 (1992), cert. denied, 507 U.S. 918, 113 S. Ct. 1277, 122 L. Ed. 2d 672 (1993).

Where the state agency acted with a reasonable basis in denying Medicaid coverage for the otoplasty surgery for an eight year old child because the procedure was cosmetic and not medically necessary, there was no provision to award attorney fees to appellant under this section. Viveros v. State Dep't of Health & Welfare, 126 Idaho 714, 889 P.2d 1104 (1995).

Potato commission lacked authority to award itself costs and fees in the administrative proceeding, as there was no separate provision for the award of attorney fees and costs within the chapters of the Idaho Code pertaining to the commission. Idaho Potato Comm'n v. Russet Valley Produce, Inc., 127 Idaho 654, 904 P.2d 566 (1995).

Commission's license revocation action against licensee was warranted, as the hearing officer found violations of both the license agreement and the commission's regulations, and issue of whether licensee's violations were "continuing violations" was not free from doubt, and the commission's interpretation regarding continuing violations was a reasonable, but erroneous, interpretation of an ambiguous statute; thus, award of attorney fees to licensee was improper. Idaho Potato Comm'n v. Russet Valley Produce, Inc., 127 Idaho 654, 904 P.2d 566 (1995).

Where the department of health and welfare (department) defended its decision to deny Medicaid applicant's surgery based solely upon the exclusion from coverage for all medical procedures for the treatment of obesity, although the department's justification for denying coverage was in error, its defense of its position was certainly not so unreasonable as to justify the imposition of attorney fees under this section. McCoy v. State, Dep't of Health & Welfare, 127 Idaho 792, 907 P.2d 110 (1995).

Because applicant, who was denied securities license, had failed to disclose the existence of a tax lien against her property, although she did not have actual notice of the lien, and the Idaho department of finance denied her application in the belief that the lien indicated she was insolvent and that she had obtained personal loans from clients in violation of national

standards, the department's conduct in denying her application was not "grossly negligent" under the standard of care set forth under §§ 6-904B and 6-904C; reversal of department's decision by district court meant an award of attorney fees under this section was not required. Rincover v. State, Dep't of Fin., 128 Idaho 653, 917 P.2d 1293 (1996).

Although court held that employer's payment was not "final payment" under § 72-1355A, it would go too far to rule that the department of employment acted without a reasonable basis in law or fact as to the definition of "final payment" under that section; thus, employer was not entitled to an award of attorney's fees under this section. Northwest Pipeline Corp. v. State, Dep't of Emp., 129 Idaho 548, 928 P.2d 898 (1996).

County employee who appealed hearing officer's refusal to award him attorney fees was not entitled to attorney fees on appeal on ground that the action of the county commissioners' position was reasonable in defending against the appellate issue as characterized by employee and because of failure of employee to clearly assert the actual holding in case as the controlling authority in addressing the erroneous conclusion reached by the hearing officer. Ockerman v. Ada County Bd. of Comm'rs, 130 Idaho 265, 939 P.2d 584 (Ct. App. 1997).

Where, at the time of the action which formed the basis of the lawsuit, the specific provisions upon which the state agency relied had not been construed by the courts, the fact that the court below disagreed with the agency's interpretation and application of those provisions did not render the agency's action unreasonable in the circumstances, and the district court did not err in denying the request for attorney fees. Rincover v. State, Dep't of Fin., Sec. Bureau, 132 Idaho 547, 976 P.2d 473 (1999), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Although a zoning board erroneously interpreted an ordinance, where it examined that ordinance and determined that a subdivision would be beneficial to the county, it acted in a way that fairly and reasonably addressed the issue, and the district court did not err in denying the plaintiff's request for attorney fees. Payette River Property Owners Ass'n v. Board of Comm'rs, 132 Idaho 551, 976 P.2d 477 (1999), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Since the interpretation of section 47-701 and whether sand, gravel and pumice were included in that section's list of minerals presented a question of first impression before the court, the state did not act without a reasonable basis in fact or law in defending an action for quiet title, and the district court's ruling that the plaintiffs were not entitled to an award of attorney fees was affirmed. Treasure Valley Concrete, Inc. v. State, 132 Idaho 673, 978 P.2d 233 (1999), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Where the appellate court held that a city council lawfully withheld a special use permit, thereby reversing the district court's ruling, the losing party on appeal was not entitled to attorney fees. Lamar Corp. v. City of Twin Falls, 133 Idaho 36, 981 P.2d 1146 (1999).

No award of attorney fees on appeal was made where the plaintiff sought such an award as an additional claim in its issues on appeal, but failed to include any argument or authority in its opening brief. Sprenger, Grubb & Assocs. v. City of Hailey, 133 Idaho 320, 986 P.2d 343 (1999).

Denial of attorney fees was proper where the state agency was not without a reasonable basis in fact or law in bringing and maintaining the suit against defendant for violation of the Idaho Securities Act. State v. Resource Serv. Co., 134 Idaho 282, 1 P.3d 783 (2000), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Attorney fees were not awarded where it could not be shown that the parties acted without a reasonable basis in fact or law. Stacey v. Idaho Dep't of Labor, 134 Idaho 727, 9 P.3d 530 (2000), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Property owners who challenged a board of county commissioners' decision to grant a special use permit for the development of a gravel pit were not entitled to an award of attorney fees, where they failed to prove that the board's decision should be overturned and, thus, were not prevailing parties and failed to prove that the board's actions were without a reasonable basis in fact or law. Evans v. Bd. of Comm'rs, 137 Idaho 428, 50 P.3d 443 (2002).

Where the appellants failed to prove that the zoning board's decision should be overturned and failed to prove that the Board's actions were

"without a reasonable basis in fact or law," the residents were not the prevailing party and were not entitled to an award of attorney fees. Evans v. Bd. of Comm'rs, 137 Idaho 428, 50 P.3d 443 (2002).

Because an appeal required the court to interpret a statute for the first time within the context of this case, neither party was entitled to attorney fees under either § 12-121 or this section. Sacred Heart Med. Ctr. v. Boundary County, 138 Idaho 534, 66 P.3d 238 (2003).

Because the employee did not prevail on his appeal from the denial of his claim for unemployment insurance benefits, he was not entitled to an award of attorney fees. Uhl v. Ballard Med. Prods., Inc., 138 Idaho 653, 67 P.3d 1265 (2003).

Award of attorney fees was denied to the county where a legitimate question was presented by the hospital as to what constituted an application for reimbursement or delayed application. IHC Hosps., Inc. v. Teton County, 139 Idaho 188, 75 P.3d 1198 (2003).

No attorney fees were awarded to the county and the intervenors where they were not the prevailing parties nor did the state act without a reasonable basis in fact or law in pursuing the appeal, so as to meet the standard for an award of fees under this section. State ex rel. Kempthorne v. Blaine County, 139 Idaho 348, 79 P.3d 707 (2003).

Although respondents prevailed on appeal, respondents were not entitled to attorney fees on appeal, where the challenge appellant brought was reasonably founded in fact and law and was not brought frivolously, unreasonably, or without foundation. SE/Z Constr., L.L.C. v. Idaho State Univ., 140 Idaho 8, 89 P.3d 848 (2004).

While a school district was a taxing district within the meaning of this section and § 33-5206(1) specifically provided that a charter school shall not levy taxes; thus, while the school was a charter school and part of the school district, it was not a taxing district and the district judge did not err in refusing to award the parent attorney fees. Nampa Charter Sch., Inc. v. Delapaz, 140 Idaho 23, 89 P.3d 863 (2004).

Where the county did not act with a reasonable basis in fact or law, the trial court erred in denying the gravel company's request for attorney fees. Reardon v. City of Burley, 140 Idaho 115, 90 P.3d 340 (2004), overruled on

other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Although the county claimed attorney fees on appeal pursuant to this section for defending an appeal brought without a reasonable basis in fact or law, because the landowners raised issues relating to the interpretation of the building code provisions which the appellate court had not previously addressed, the appeal was not brought without a reasonable basis in fact or law and the appellate court declined to award the county attorney fees on appeal. Ada County v. Fuhrman, 140 Idaho 230, 91 P.3d 1134 (2004).

Citizen lacked standing to challenge the cigarette tax since he had a "generalized grievance" shared by a large class of citizens, and his remedy was through the political process. Further, the sales and use tax bill originated in the Idaho House and although substantially amended in the Idaho Senate, it was constitutionally enacted; although the law was well settled that the Senate could amend a revenue bill, the appeal was not frivolous, so as to have justified an award of attorney's fees for the state. Gallagher v. State, 141 Idaho 665, 115 P.3d 756 (2005).

In an appeal of a decision by the board of tax appeals, neither the counties or a company were entitled to attorney fees because both parties prevailed in part and lost in part. Canyon County Bd. of Equalization v. Amalgamated Sugar Co., 143 Idaho 58, 137 P.3d 445 (2006).

Although the Idaho industrial commission's denial of unemployment benefits to a nurse who was discharged for misconduct was upheld because it was supported by substantial and competent evidence, her employer was not entitled to attorney's fees because the nurse's appeal was not pursued unreasonably. Gunter v. Magic Valley Reg'l Med. Ctr., 143 Idaho 63, 137 P.3d 450 (2006).

Where a city did not prevail in a declaratory judgment action against several presenters regarding a proposed marijuana initiative, it was not entitled to attorney fees; moreover, the presenters were not entitled to such fees on appeal either because the appeal had a reasonable basis since a pivotal case on the issue had not yet been decided. Davidson v. Wright, 143 Idaho 616, 151 P.3d 812 (2006).

Neither a board of county commissioners or a landowner, who challenged the issuance of a permit to build a subdivision, were entitled to attorney's fees because, while the landowner was not the prevailing party, he did not act without a reasonable basis. Cowan v. Bd. of Comm'rs, 143 Idaho 501, 148 P.3d 1247 (2006).

In corrections officers' suit based on the disclosure of personal information, where defendants were granted summary judgment, attorney fees were denied on appeal to the officers and defendants because the officers did not prevail on appeal and did not bring the appeal unreasonably or without foundation. Nation v. State, 144 Idaho 177, 158 P.3d 953 (2007).

In a farm's challenge of a county ordinance creating an overlay zone, trial court properly denied fees to both parties, as the county did not act without a reasonable basis in fact or law in enacting the ordinance. Neither party was entitled to attorney fees on appeal as the farm was not the prevailing party and while the county prevailed on appeal, there was nothing unreasonable about the farm's challenge to the district court's decision. Ralph Naylor Farms, LLC v. Latah County, 144 Idaho 806, 172 P.3d 1081 (2007), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Since the neighboring landowners did not prevail on their claim against a developer, they were not entitled to attorney fees. Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 176 P.3d 126 (2007).

Where a developer filed suit for judicial review of the Idaho transportation department's (ITD) action on an encroachment permit approved with conditions and the district court improperly dismissed the complaint for failure to exhaust administrative remedies, ITD was not a prevailing party entitled to recover attorney fees and costs on appeal pursuant to subsection (1) of this section. The developer was also denied fees and costs, because ITD did not act without a reasonable basis in fact or law. Lochsa Falls, L.L.C. v. State, 147 Idaho 232, 207 P.3d 963 (2009).

Property owners were denied attorney fees under § 12-121 and this section where they lost on two of their three claims. Plaintiffs were not the prevailing party, and there was no indication that the state defended the claims against plaintiffs unreasonably or without foundation. Harris v. State Ex Rel. Kempthorne, 147 Idaho 401, 210 P.3d 86 (2009).

Employee was not entitled to fees under this section. Although she was the prevailing party, she failed to show that the Idaho department of labor acted without a reasonable basis in fact or law. Henderson v. Eclipse Traffic Control & Flagging, Inc., 147 Idaho 628, 213 P.3d 718 (2009).

Although victorious, Idaho department of labor was not entitled to recover attorney's fees on appeal, because the issue of whether a postage-meter mark could substitute as a USPS postmark, when determining the filing date of an appeal of an Idaho industrial commission decision, was an issue of first impression in this state. Smith v. Idaho Dep't of Labor, 148 Idaho 72, 218 P.3d 1133 (2009).

A petition for judicial review of an agency action is neither an administrative proceeding nor a civil judicial proceeding; thus, this section does not enable the courts to award attorney fees in such cases. Johnson v. State (In re Johnson), 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Property owner acted reasonably on appeal in a zoning case, conceding arguments where a decision unfavorable to him was res judicata and by not making frivolous arguments. Thus, although the owner lacked standing under § 10-1202 because the zoning of his land had not been changed, the county was not entitled to attorney fees on appeal. Martin v. Smith, 154 Idaho 161, 296 P.3d 367 (2013).

Where an irrigation district claimed attorney fees under § 12-121, which was inapplicable, rather than under this section, which applied to it as a government taxing entity, the district was not awarded fees under either section; however, the district was entitled to fees under Idaho App. R. 11.2, which alllows for attorney fees when an appeal is brought for an improper purpose. Bettwieser v. New York Irrigation Dist., 154 Idaho 317, 297 P.3d 1134 (2013).

Improper Award.

Award of attorney fees against the state of Idaho was improper where plaintiff organization failed to prevail on a substantive issue and organization's interest was to protect private pecuniary interests, not to vindicate public interests. State v. Hagerman Water Right Owners, Inc., 130 Idaho 718, 947 P.2d 391 (1997).

Because the case was being remanded to the city in order for it to make reviewable findings of fact, it could no longer be said that the developer was the prevailing party; thus, the Idaho supreme court vacated the district court's award of attorney fees to the developer. Crown Point Dev. v. City of Sun Valley, 144 Idaho 72, 156 P.3d 573 (2007).

District court erred in awarding a city a portion of its attorney fees where its decision was based on an incorrect interpretation of an annexation agreement and neither party's position with respect to the agreement was unreasonable. Lane Ranch P'ship v. City of Sun Valley, 144 Idaho 584, 166 P.3d 374 (2007).

Intervening Party.

Costs were levied against the county pursuant to subsection (1) of this section, and although the issue of whether costs may be levied against an intervening party pursuant to Idaho R. Civ. P. 54(d) had not previously been addressed by the court, because the intervening party was very active in the appeal of this case, the intervening party was required to share the burden of appellate costs with the county. Rural Kootenai Org., Inc. v. Board of Comm'rs, 133 Idaho 833, 993 P.2d 596 (1999).

Political Subdivision.

The Kootenai County joint board of commissioners, comprised of officials from both Kootenai County and the City of Hauser (non-voting members), is a political subdivision for the purposes of subsection (1). Hauser Lake Rod & Gun Club, Inc. v. City of Hauser, 162 Idaho 260, 396 P.3d 689 (2017).

Prevailing Party.

Because both parties prevailed in part on appeal, neither of them was a prevailing party entitled to attorney fees on appeal. Wright v. Bd. of Psychological Exam'rs (In re Bd. of Psychologist Examiners' Final Order), 148 Idaho 542, 224 P.3d 1131 (2010).

Pro Se.

An attorney acting as a pro se litigant is not entitled to an award of attorney fees on appeal. Chavez v. Canyon County, 152 Idaho 297, 271 P.3d 695 (2012).

Purpose.

The purpose of this section is two-fold: (1) To serve as a deterrent to groundless or arbitrary agency action; and (2) to provide a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies should never had made. Bogner v. State Dep't of Revenue & Taxation, 107 Idaho 854, 693 P.2d 1056 (1984).

Remand.

Attorney fees were not awarded on appeal in a case involving a permit for a livestock confinement because there was a remand of the case for further action. Halper v. Jerome County, 143 Idaho 691, 152 P.3d 562 (2007).

An order remanding a case to an administrative agency for further consideration normally does not qualify as relief on the merits. Kaseburg v. State, 154 Idaho 570, 300 P.3d 1058 (2013).

Standard of Review.

An appellate court should review a district court's award of attorney's fees for abuse of discretion. That approach is preferable to a de novo review because: (1) the legislature specifically provided that the court shall award attorney fees under this section "if it finds" the nonprevailing party acted without reasonable basis in fact or law, indicating the determinative finding was to be made by the trial court; and (2) this section speaks in terms of the "reasonableness" of the losing party's actions, which implies a measure of objectivity, and which is properly left to the district court's reasoned judgment. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497 (2011); City of Osborn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

State Agency.

A county is not a state agency subject to this section. Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988).

A county is not a "state agency" within the meaning of this section. IHC Hosps. v. Board of Comm'rs, 117 Idaho 207, 786 P.2d 600 (Ct. App. 1990).

Since the state building authority is a public instrumentality and not an agency within the meaning of this section, subsection (3) of § 12-120 and not this section is the applicable section for the awarding of attorney fees in an action brought by architects against authority for architectural services performed under contract. Moreover, since the action was not brought, pursued or defended frivolously, unreasonably or without foundation, attorney fees cannot be awarded under § 12-121. Bott v. Idaho State Bldg. Auth., 122 Idaho 471, 835 P.2d 1282 (1992).

The state building authority's function is to provide a specific service for the state at a lower cost than could be accomplished by a private entity. Its interaction with the public is of a different nature than that of a true "state agency" which "determines contested cases" or "prescribes law." Accordingly, the authority is a public instrumentality and not an "agency" within the meaning of this section, making such section inapplicable in action by architects against authority. Bott v. Idaho State Bldg. Auth., 122 Idaho 471, 835 P.2d 1282 (1992).

The Idaho public utilities commission is a legislative agency not falling within the definition of a "state" agency as defined by § 67-5201(1). Owner-Operator Indep. Drivers Ass'n v. Idaho Pub. Utils. Comm'n, 125 Idaho 401, 871 P.2d 818 (1994), modified on other grounds, Roe v. Harris, 128 Idaho 569, 917 P.2d 403 (1996).

The private attorney general doctrine considers the value of the prevailing party's contribution while this section considers the character of the losing party's case: the difference evidences a legislative intent to make the standard of this section the basis for an attorney fee award against a state agency, rather than the tests encompassed under the private attorney general doctrine, which is not available as the basis for such an award in a case against a state agency. Roe v. Harris, 128 Idaho 569, 917 P.2d 403 (1996).

Idaho petroleum clean water trust fund (fund) was not a state agency within meaning of § 67-5201 and Fund had no power to promulgate rules or decide contested cases and was not subject to attorney fees under this section. V-1 Oil Co. v. Idaho Petro. Clean Water Trust Fund, 128 Idaho 890, 920 P.2d 909, cert. denied, 519 U.S. 1009, 117 S. Ct. 514, 136 L. Ed. 2d 403 (1996).

This statute is not discretionary, but provides that the court must award attorney fees where a state agency did not act with a reasonable basis in fact or law in a proceeding involving a person who prevails in the action. Rincover v. State, Dep't of Fin., Sec. Bureau, 132 Idaho 547, 976 P.2d 473 (1999), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

In an employee's appeal of a termination of employment case, a university was not entitled to attorney's fees because the university was not a state agency. Horne v. Idaho State Univ., 138 Idaho 700, 69 P.3d 120 (2003).

A health district is not a state agency under the clear language of § 39-401; therefore, attorney fees cannot be assessed against the district under this section. Sunnyside Indus. & Prof'l Park, LLC v. Eastern Idaho Pub. Health Dist., 147 Idaho 668, 214 P.3d 654 (Ct. App. 2009) (see 2012 amendment).

Subsection (1) is not the exclusive basis upon which to seek an award of attorney fees against a state agency or political subdivision, as attorney fees may be awarded under any other statute that expressly applies to a state agency or political subdivision, such as § 12-120(3) or 12-121. Syringa Networks, LLC v. Idaho Dep't of Admin., 155 Idaho 55, 305 P.3d 499 (2013).

Neither the state of Idaho nor the Idaho emergency communications commission was entitled to an award of attorney fees for defending against a wireless company's appeal, as the state was neither a state agency nor a political subdivision, and the commission did not present any argument contending that it met the definition set forth in paragraph (5)(d) [now (f)]. Tracfone Wireless, Inc. v. State, 158 Idaho 671, 351 P.3d 599 (2015).

Cited Crane Creek Country Club v. Idaho State Tax Comm'n, 117 Idaho 585, 790 P.2d 366 (1990); Moosman v. Idaho Horse Racing Comm'n, 117 Idaho 949, 793 P.2d 181 (1990); Fox v. Board of County Comm'rs, 121 Idaho 684, 827 P.2d 697 (1992); Rim View Trout Co. v. Higginson, 121 Idaho 819, 828 P.2d 848 (1992); Central Paving Co. v. Idaho Tax Comm'n, 126 Idaho 174, 879 P.2d 1107 (1994); D & D Trucking, Inc. v. Idaho Transp. Dep't, 126 Idaho 417, 885 P.2d 376 (1994); Nelson v. Big Lost River Irrigation Dist., 133 Idaho 139, 983 P.2d 212 (1999); Blaha v. Board

of Ada County Comm'rs, 134 Idaho 770, 9 P.3d 1236 (2000); Rogers v. Gooding Pub. Joint Sch. Dist. No. 231, 135 Idaho 480, 20 P.3d 16 (2001); Sacred Heart Med. Ctr. v. Nez Perce County, 136 Idaho 448, 35 P.3d 265 (2001); Canal/Norcrest/Columbus Action Comm. v. City of Boise, 136 Idaho 666, 39 P.3d 606 (2001); Friends of Farm to Mkt. v. Valley County, 137 Idaho 192, 46 P.3d 9 (2002); Bolger v. Lance, 137 Idaho 792, 53 P.3d 1211 (2002); Canal/Norcrest/Columbus Action Comm. v. City of Boise, 137 Idaho 377, 48 P.3d 1266 (2002); Sanders Orchard v. Gem County, 137 Idaho 695, 52 P.3d 840 (2002); Laurino v. Bd. of Prof'l Discipline, 137 Idaho 596, 51 P.3d 410 (2002); Floyd v. Bd. of Comm'rs, 137 Idaho 718, 52 P.3d 863 (2002); Eacret v. Bonner County, 139 Idaho 780, 86 P.3d 494 (2004); E. Idaho Reg'l Med. Ctr. v. Minidoka County (In re Bermudes), 141 Idaho 157, 106 P.3d 1123 (2005); Karr v. Bermeosolo, 142 Idaho 444, 129 P.3d 88 (2005); Casi Found., Inc. v. Doe (In re Doe), 142 Idaho 397, 128 P.3d 934 (2006); Sanchez v. State, 143 Idaho 239, 141 P.3d 1108 (2006); Mercy Med. Ctr. v. Ada County, 143 Idaho 899, 155 P.3d 700 (2007); Baird Oil Co., Inc. v. Idaho State Tax Comm'n, 144 Idaho 229, 159 P.3d 866 (2007); Dorea Enters. v. City of Blackfoot, 144 Idaho 422, 163 P.3d 211 (2007); Blanton v. Canyon County, 144 Idaho 718, 170 P.3d 383 (2007); Lane Ranch P'ship v. City of Sun Valley, 145 Idaho 87, 175 P.3d 776 (2007); Jenkins v. Barsalou, 145 Idaho 202, 177 P.3d 949 (2008); Giltner, Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 415, 179 P.3d 1071 (2008); Spencer v. Kootenai County, 145 Idaho 448, 180 P.3d 487 (2008); Giltner Dairy, LLC v. Jerome County, 145 Idaho 630, 181 P.3d 1238 (2008); Bonner County v. Kootenai Hosp. Dist. (In re Daniel W.), 145 Idaho 677, 183 P.3d 765 (2008); Excell Constr., Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 783, 186 P.3d 639 (2008); St. Alphonsus Reg'l Med. Ctr., Inc. v. Bd. of County Comm'rs, 146 Idaho 51, 190 P.3d 870 (2008); Cantwell v. City of Boise, 146 Idaho 127, 191 P.3d 205 (2008); Galli v. Idaho County, 146 Idaho 155, 191 P.3d 233 (2008); Mercy Med. Ctr. v. Ada County, 146 Idaho 226, 192 P.3d 1050 (2008); Waller v. Dep't of Health & Welfare, 146 Idaho 234, 192 P.3d 1058 (2008); Euclid Ave. Trust v. City of Boise, 146 Idaho 306, 193 P.3d 853 (2008); State Dep't of Health & Welfare v. Hudelson (In re Hudelson), 146 Idaho 439, 196 P.3d 905 (2008); Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009); Black Labrador Investing, LLC v. Kuna City Council, 147 Idaho 92, 205 P.3d 1228 (2009); Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211

P.3d 100 (2009); Idaho Dep't of Health & Welfare v. Matey (In re Matey), 147 Idaho 604, 213 P.3d 389 (2009); Burns Holdings, LLC v. Madison County Bd., 147 Idaho 660, 214 P.3d 646 (2009); Dry Creek Partners, LLC v. Ada County Comm'rs Ex Rel. State, 148 Idaho 11, 217 P.3d 1282 (2009); Nelson v. Big Lost River Irrigation Dist., 148 Idaho 157, 219 P.3d 804 (2009); Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); Sirius LC v. Erickson, 150 Idaho 80, 244 P.3d 224 (2010); Zingiber Inv., LLC v. Hagerman Highway Dist., 150 Idaho 675, 249 P.3d 868 (2011); Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012); Sanders v. Bd. of Trs. of the Mt. Home Sch. Dist. No. 193, 156 Idaho 269, 322 P.3d 1002 (2014); Bonner County v. Cunningham, 156 Idaho 291, 323 P.3d 1252 (Ct. App. 2014); Hoffman v. Bd. of Local Improvement Dist. No. 1101, 163 Idaho 464, 415 P.3d 332 (2016); Arnold v. City of Stanley, 162 Idaho 115, 394 P.3d 1160 (2017); Christy v. Grasmick Produce, 162 Idaho 199, 395 P.3d 819 (2017); Schweitzer Basin Water Co. v. Schweitzer Fire Dist., 163 Idaho 186, 408 P.3d 1258 (Ct. App. 2017); Westover v. Idaho Counties Risk Mgmt. Program, 164 Idaho 385, 430 P.3d 1284 (2018); Galvin v. City of Middleton, 164 Idaho 642, 434 P.3d 817 (2019); SilverWing at Sandpoint, LLC v. Bonner Cty., 164 Idaho 786, 435 P.3d 1106 (2019); Hardy v. Phelps, — Idaho —, 443 P.3d 151 (2019); Sylte v. Idaho Dep't of Water Res., — Idaho —, 443 P.3d 252 (2019).

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ALR. — Private attorney general doctrine — State cases. 106 A.L.R.5th 523.

§ 12-118. Costs against the state — How paid. — When the state is a party and costs are awarded against it, they must be paid out of the state treasury, and the state controller shall draw his warrant therefor on the general fund.

History.

C.C.P. 1881, § 708; R.S., R.C., & C.L., § 4917; C.S., § 7223; I.C.A., § 12-118; am. 1994, ch. 180, § 9, p. 420.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State controller, § 67-1001 et seq.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 9 of S.L. 1994, ch. 180 became effective January 2, 1995.

CASE NOTES

Actions against tax collectors.

Application of section.

Actions Against Tax Collectors.

Costs may be allowed against the state in favor of the plaintiff in a successful action against the former state tax collector and the acting state tax collector for refund of taxes paid by the plaintiff under protest as to their legality. American Oil Co. v. Neill, 90 Idaho 333, 414 P.2d 206 (1966), overruled on other grounds, County of Ada v. Red Steer Drive-Ins of Nev., Inc., 101 Idaho 94, 609 P.2d 161 (1980).

Application of Section.

This section does not authorize assessment of costs against the state, but only provides the source from which such costs are paid, if authorized by some other section. Chastain's Inc. v. State Tax Comm'n, 72 Idaho 344, 241 P.2d 167 (1952).

The plaintiff foreign corporation was entitled to recover its costs from the state, it being entitled to payment of its claim for services rendered pursuant to contract with the Idaho state department for the preparation of certain maps. Aero Serv. Corp. W. v. Benson, 84 Idaho 416, 374 P.2d 277 (1962).

State was not entitled to a writ of prohibition to enjoin a district court from assessing fees for a special master against the state because the appointment of special masters and the assessment of special master costs were matters within the discretion of the district courts. Clear statutory authority existed for the award of such fees, as well direction as to how costs awarded against the state were to be paid. State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

Cited Brady v. Place, 41 Idaho 747, 242 P. 314 (1925); Chicago, M. & St. P. Ry. v. Public Utils. Comm'n, 47 Idaho 346, 275 P. 780 (1929).

§ 12-119. Costs against a county — How paid. — When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

History.

C.C.P. 1881, § 709; R.S., R.C., & C.L., § 4918; C.S., § 7224; I.C.A., § 12-119.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Cited St. Alphonsus Regional Medical Ctr., Ltd. v. Killeen, 124 Idaho 197, 858 P.2d 736 (1993).

Idaho Code § 12-120

§ 12-120. Attorney's fees in civil actions. — (1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is thirty-five thousand dollars ($35,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

(2) The provisions of subsection (1) of this section shall also apply to any counterclaims, cross-claims or third party claims which may be filed after the initiation of the original action. Except that a ten (10) day written demand letter shall not be required in the case of a counterclaim.

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(4) In actions for personal injury, where the amount of plaintiff's claim for damages does not exceed thirty-five thousand dollars ($35,000), there shall be taxed and allowed to the claimant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no

known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

The term "statement of claim" shall mean a written statement signed by the plaintiff's attorney, or if no attorney, by the plaintiff which includes:

(a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the plaintiff's demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the plaintiff's demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the plaintiff has not been paid.

(b) Legible copies of all medical records, bills and other documentation pertinent to the plaintiff's alleged damages.

If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorney's fees under this section.

(5) In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

(6) In any small claims case resulting in entry of a money judgment or judgment for recovery of specific property, the party in whose favor the judgment is entered shall be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and an opportunity for hearing. The amount of such attorney's fees shall be determined by the court after consideration of the factors set out in rule

54(e)(3) of the Idaho rules of civil procedure, or any future rule that the supreme court of the state of Idaho may promulgate, but the court shall not base its determination of such fees upon any contingent fees arrangement between attorney and client, or any arrangement setting such fees as a percentage of the judgment or the amount recovered. In no event shall postjudgment attorney's fees exceed the principal amount of the judgment or value of property recovered.

History.

1970, ch. 44, § 1, p. 91; am. 1975, ch. 65, § 1, p. 131; am. 1986, ch. 205, § 1, p. 511; am. 1987, ch. 204, § 1, p. 430; am. 1988, ch. 343, § 1, p. 1020; am. 1994, ch. 353, § 1, p. 1113; am. 1996, ch. 383, § 1, p. 1305; am. 2001, ch. 161, § 1, p. 569; am. 2012, ch. 94, § 1, p. 257; am. 2018, ch. 244, § 2, p. 567.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 94, substituted "thirty-five thousand dollars ($35,000) or less" for "twenty-five thousand dollars ($25,000) or less" near the beginning of subsection (1).

The 2018 amendment, by ch. 244, substituted "thirty-five thousand dollars ($35,000)" for "twenty-five thousand dollars ($25,000)" in the first sentence of the first paragraph in subsection (4).

Effective Dates.

Section 2 of S.L. 1988, ch. 343 declared an emergency. Approved April 6, 1988.

CASE NOTES

Action for quiet title.

Action on contract.

Action on lease.

Actions on negotiable instruments.

Action on note.

Amended judgment.

Amount of award.

Appeal of award of attorney's fees.

Application.

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— Insurance suit.

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Award proper.

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Competitive bidding.

Constitutionality.

Construction with other law.

Contingent fee basis.

Contract.

— Action.

— Breach.

— Of sale.

Contract to purchase real property.

Contractual fee provision.

Counter-claimants.

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Cross-claim.

Declaratory judgment.

Demand for payment.

Denial of award proper.

Discretion of court.

Duplicitous.

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Employment discrimination.

Federal courts.

Frivolous defense.

Future commercial ramifications.

Genuine issues.

Grounds.

Insufficiency of claim.

Illegal transaction.

Interest.

Interpretation of terms.

Judgment.

Lease-option agreements.

Legislative intent.

Lien foreclosures.

Malpractice action.

"Miller Act" suit.

Monetary limitation.

Negligence action.

New item of damage.

Open account.

Pleading.

Postjudgment award.

Prevailing party.

— Reversal on appeal.

Promissory note.

Pro se litigants.

Proper procedure.

Purchase or sale of goods, wares or merchandise.

Quashing of lis pendens.

Real estate contract.

Reasonableness.

Retroactive effect of amendment.

State agency.

Summary judgment.

Wage claim.

Action for Quiet Title.

Where the basis for a request for attorney fees was an action to quiet title in real property, the outcome of which depended on the interpretation of section 47-701 and on whether sand, gravel and pumice were included in the minerals reserved by the state in that statute, the ruling that attorney fees

were not awardable under the provision covering commercial transactions was affirmed. Treasure Valley Concrete, Inc. v. State, 132 Idaho 673, 978 P.2d 233 (1999), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Court properly denied creditors' request for attorney fees in their quiet title action against a debtor because the action involved a determination of property rights and subsection (3) of this section did not support an award of attorney fees in such an action. Quiet title action involved the determination of rights to 20 acres; it did not involve the validity or breach of a commercial lease. Merrill v. Gibson, 139 Idaho 840, 87 P.3d 949, cert. denied, 543 U.S. 926, 125 S. Ct. 311, 160 L. Ed. 2d 225 (2004).

Action on Contract.

For attorney fees to be recoverable under subsection (2) (now (3)) of this section, the action must be one to recover on a contract relating to the purchase or sale of goods, wares or merchandise. It is not enough that the transaction between the parties relate to the purchase or sale of goods; the action itself must be one to recover on the contract. Chenery v. Agri-Lines Corp., 106 Idaho 687, 682 P.2d 640 (Ct. App. 1984).

District court was correct by not awarding defendant attorney fees; to recover attorney fees, action must be one to recover on the contract and not merely an action arising from a transaction relating to the purchase or sale of goods, and trial court twice ruled that there was no contract between defendant as manufacturer of a product and the plaintiffs as purchasers of the product from retailer. Day v. CIBA Geigy Corp., 115 Idaho 1015, 772 P.2d 222 (1989).

Where real estate contract between the parties provided for an award of attorney fees to the prevailing party and the vendors fully prevailed on issues raised in the appeal by the buyers, vendors were awarded costs and reasonable attorney fees; yet because vendors did not prevail on their cross-appeal, buyers were entitled to costs and attorney fees under subsection (3) of this section for the defense of the cross-appeal; cost bills to be submitted by vendors and buyers were required to separately show the amounts incurred for prosecuting the appeal and cross-appeal and defending against the cross-appeal respectively. Toews v. Funk, 129 Idaho 316, 924 P.2d 217 (Ct. App. 1994).

Since contract of farmer bringing action claiming a breach of contract to fertilize crops was not for "personal or household purposes," a "commercial transaction" was the gravamen of the lawsuit and farmer was entitled to award of attorney fees incurred on appeal. Ward v. Puregro Co., 128 Idaho 366, 913 P.2d 582 (1996).

Actions on employment contracts are subject to the attorney fee provisions of this section; thus, employer was properly granted attorney fees it incurred in successfully defending against employee's claims for breach of express and implied contract terms, including the claim for violation of the implied covenant of good faith. Atwood v. Western Constr. Inc., 129 Idaho 234, 923 P.2d 479 (Ct. App. 1996).

Because in arbitration proceedings on a written contract for rebar work performed by subcontractor, subcontractor chose to frame its claim as one arising under a separate structural steel contract for which it had received full payment, rather than as a claim under the rebar contract from which the contractor had withheld funds because of claimed deficiencies in the structural work, contractor's obligation to subcontractor had been discharged and magistrate's dismissal of the claim and award of attorney fees were upheld. Record Steel & Constr., Inc. v. Martel Constr., Inc., 129 Idaho 288, 923 P.2d 995 (Ct. App. 1996).

In an action brought to recover a debt incurred on a contract relating to the sale and purchase of goods, an award of attorney's fees to the prevailing party is mandatory. Robertson Supply, Inc. v. Nicholls, 131 Idaho 99, 952 P.2d 914 (Ct. App. 1998).

The award of attorney fees was improper because, although there was ample evidence to show that the parties entered into the purchase and sale agreement for commercial purposes, the plaintiffs' suit was based upon a tort claim of fraud rather than upon the contractual agreement between the parties. Sowards v. Rathbun, 134 Idaho 702, 8 P.3d 1245 (2000).

When a quasi-contract claim is presented in the alternative to a breach of contract cause of action as a fallback position in the event that the contract claim fails, and where the quasi-contract claim is based upon the same facts and circumstances as the breach of contract claim, and the alleged transaction is commercial in nature, the prevailing party is entitled to

recover attorney fees under subsection (3). Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

Used car dealership and its owners were entitled to attorney's fees after prevailing at trial and on appeal in a buyer's action to revoke acceptance of a sale contract. Haight v. Dale's Used Cars, Inc., 139 Idaho 853, 87 P.3d 962 (Ct. App. 2003).

Refusal to award attorney's fees on appeal in the parties' contract dispute action was appropriate because the lessee did not present any argument justifying an award of attorney's fees. In fact, the lessee did not even state that it was entitled to attorney fees. Independence Lead Mines Co. v. Hecla Mining Co., 143 Idaho 22, 137 P.3d 409 (2006).

Because the amounts recovered by a trout hatchery that had breached a contract with a trout grower were offsets against the amounts that they were obligated to pay the grower, recognition of those amounts did not prevent the grower from being the prevailing party in their breach of contract action; therefore, the district court's grant of attorney fees to the grower was affirmed. Griffith v. Clear Lakes Trout Co., 143 Idaho 733, 152 P.3d 604 (2007).

From a contractor's suit to recover payment on a contract which ended in the homeowners' favor, the homeowners were entitled to reasonable attorney fees relating to their defense of the contractor's tort claim as the commercial transaction, the parties' contract, initiated the presence of the contractor's equipment on the homeowners' property and was integral to the contractor's claim. Lee v. Nickerson, 146 Idaho 5, 189 P.3d 467 (2008).

Implied-in-fact contract with an architect who was not yet licensed was illegal; in the case of an illegal contract, neither party may claim the benefit of this section. Farrell v. Whiteman, 146 Idaho 604, 200 P.3d 1153 (2009).

Action on Lease.

Subsection (2) (now (3)) of this section is inapplicable on its face to a lease of real property. Bastian v. Albertson's, Inc., 102 Idaho 909, 643 P.2d 1079 (Ct. App. 1982).

Court, in a commercial lease dispute, erred by awarding attorney's fees to a tenant on a landlord's negligence claim where the lease and the statute did

not provide for fees on the claims relating to a negligence cause of action. J. R. Simplot Co. v. Rycair, Inc., 138 Idaho 557, 67 P.3d 36 (2003).

Because both parties in a commercial lease suit prevailed in part, the court of appeals did not award attorney fees. J. R. Simplot Co. v. Rycair, Inc., 138 Idaho 557, 67 P.3d 36 (2003).

In a breach of contract and tortious interference with contract action based on a business lease, an award of attorney's fees to plaintiff was proper, as the gravamen of the lawsuit was a commercial transaction. Gunter v. Murphy's Lounge, L.L.C., 141 Idaho 16, 105 P.3d 676 (2005).

Lessee was entitled to attorney's fees, even though the underlying action sounded in tort, where lessor had alleged that the lessee was obligated under a rental agreement to indemnify it for any costs incurred in defending against a tort claim, as the rental agreement, a lease for a commercial building, met the definition of a commercial transaction. Simono v. Turner House, 160 Idaho 788, 379 P.3d 1058 (2016).

Actions on Negotiable Instruments.

An action based on § 28-4-302 for late return of an item is not an action "on a negotiable instrument" within the meaning of subsection (2) (now (3)) of this section. Idah-Best, Inc. v. First Sec. Bank, 99 Idaho 517, 584 P.2d 1242 (1978).

Action on Note.

Subsection (3) permits recovery of attorney's fees by the prevailing party in a civil action to recover a note. Student Loan Fund of Idaho, Inc. v. Duerner, 131 Idaho 45, 951 P.2d 1272 (1997), cert. denied, 525 U.S. 816, 119 S. Ct. 53, 142 L. Ed. 2d 41 (1998).

As the prevailing party in an action to collect on a promissory note and pursuant to subsection (3), defendant was entitled to attorney fees on appeal. Beard v. George, 135 Idaho 685, 23 P.3d 147 (2001).

Amended Judgment.

The district court attempted to reconcile the rule requiring a timely filing of a cost memorandum with the rule permitting a motion to amend the judgment by rigidly applying the strictures of Idaho R. Civ. P. 54(d)(5); the court's view would have required claimant to perform a virtually useless act

by filing a claim for attorney fees when the court already had ruled, by its earlier judgment, that claimant was not entitled to recover any such award; until the judgment was amended with respect to the attorney fees determination, a claim for that item under Idaho R. Civ. P. 54(d)(5) would be subject to objection, and likely stricken on the ground that the question of entitlement already had been adjudicated; it was not until the court granted the later motion to amend the judgment that claimant became entitled to an award for fees. Instead of the strict approach taken by the district court, the court should have recognized that the right to costs, and an award for attorney fees, would mature anew when an amended judgment under Idaho R. Civ. P. 59(a) was entered reflecting the court's determination that claimant was entitled to an award for fees, under this section. Western World, Inc. v. Prater, 121 Idaho 870, 828 P.2d 899 (Ct. App. 1992).

Amount of Award.

In determining the amount of attorney fees awarded under this section in suit to collect a debt evidenced by a note, the court correctly considered the factors under Idaho R. Civ. P. 54(e)(3). Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

The district court's denial of the school district's request for attorney fees on the grounds that the school district failed to specifically plead an amount less than $25,000 [now $35,000] was erroneous because the school district was entitled to attorney fees as the prevailing party in the case. Loftus v. Snake River Sch. Dist., 130 Idaho 426, 942 P.2d 550 (1997).

Although the amount involved and the results obtained are factors to be used in determining the amount of attorney fees to be awarded, as set forth in Idaho R. Civ. P. 54(e)(3), the fact that the plaintiffs only recovered 23% of what their complaint sought did not require that the award of attorney fees to them should be reduced accordingly. Lunders v. Estate of Snyder, 131 Idaho 689, 963 P.2d 372 (1998).

A district court did not abuse its discretion in awarding litigants 75% of their attorney fees, where the court analyzed the litigation as a whole and determined which party had prevailed on the numerous claims presented and litigated. Freeman & Co. v. Bolt, 132 Idaho 152, 968 P.2d 247 (Ct. App. 1998).

Where a creditor was entitled to recover reasonable attorneys' fees under subsection (3) as the prevailing party in an adversary proceeding against the debtor, the creditor was not entitled to the full amount sought because certain services performed were outside the scope of the adversary proceeding, certain services were lumped into single time entries, certain services were noncompensable clerical work, and the $300 hourly rate charged was higher than the rates the court had seen charged by skilled counsel in the area trying similar cases. Kilborn v. Haun (In re Haun), 396 B.R. 522 (Bankr. D. Idaho 2008).

Court improperly awarded more in attorney fees than the party incurred in defending a contract suit. BECO Constr. Co. v. J-U-B Eng'rs, Inc., 149 Idaho 294, 233 P.3d 1216 (2010), overruled on other grounds, Keybank Nat'l Ass'n v. PAL I, LLC, 155 Idaho 287, 311 P.3d 299 (2013).

Nothing under Idaho law equates "reasonable" attorney fees to "actual" attorney fees. Subsection (3) entitles the prevailing party to a "reasonable" attorney fee. Idaho Rule of Civil Procedure 54(e)(3) enumerates several factors to guide the reasonableness inquiry, all of which must be considered, but none of which emphasize the actual amount incurred. Inclusion, Inc. v. Idaho Dep't of Health & Welfare, 161 Idaho 239, 385 P.3d 1 (2016).

Appeal of Award of Attorney's Fees.

A party successful on an appeal defending the award to it of attorney's fees in a civil action seeking to recover for services performed on open account is also entitled to the award of attorney's fees on appeal under this section. Boise Truck & Equip., Inc. v. Hafer Logging, Inc., 107 Idaho 824, 693 P.2d 470 (Ct. App. 1984).

When an appeal concerns attorney fees alone, an award of attorney fees will be made to the prevailing party if the issue on appeal includes the entitlement to a fee award below and is not limited to the amount. Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

The amount of attorney fees awarded at trial is an appropriate factor in determining the award of attorney fees on appeal under this section. Phillips v. Miles, 116 Idaho 842, 780 P.2d 593 (Ct. App. 1989).

When reviewing a discretionary determination by the trial court regarding reasonable attorney's fees, the appellate court conducts a multi-

tiered inquiry, concerning (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistent with legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason. Meldco, Inc. v. Hollytex Carpet Mills, Inc., 118 Idaho 265, 796 P.2d 142 (Ct. App. 1990).

Application.

In actions removed from state courts, a bankruptcy court must follow the state's substantive law; since subsection (2) (now (3)) of this section grants fees, without any qualifications, to a prevailing party in specified kinds of litigation, it is a statement of state policy substantive in nature and must be applied in removed state litigation. Wetzel v. Goldsmith (In re Comstock), 16 Bankr. 206 (Bankr. D. Idaho 1981).

This section is inapplicable on its face to a contract for the sale of real estate. Bennett v. Bliss, 103 Idaho 358, 647 P.2d 814 (Ct. App. 1982).

Subsection (2) (now (3)) of this section should not be extended by judicial construction to mandate an attorney fee award on appeal where the sole issue is the reasonableness of an amount awarded below, however an award still may be allowed under § 12-121 in such a case. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

Subsection (2) (now (3)) of this section does not apply to an appeal taken solely from the amount of an award below, but it does apply where the appeal is concerned with the entitlement to an award below. Cheney v. Smith, 108 Idaho 209, 697 P.2d 1223 (Ct. App. 1985).

This section, which mandates an attorney fee award rather than simply authorizing a discretionary award, produces a harsh result for the nonprevailing party whose claim or defense is meritorious but unsuccessful. Such a result can be deemed fair only if its operation is known in advance and the parties are able to guide their litigation decisions accordingly; thus, this section as amended in 1988 would not be applied retrospectively. Howard v. Blue Cross of Idaho Health Serv., Inc., 114 Idaho 485, 757 P.2d 1204 (Ct. App. 1987).

Subsection (3) of this section was correctly applied in awarding attorney's fees to an attorney against whom a third-party complaint for

malpractice was filed by a real estate loan broker where, even though the cause of action arose prior to enactment of this subsection, the complaint was not commenced until after the effective date of this subsection. Griggs v. Nash, 116 Idaho 228, 775 P.2d 120 (1989).

In an action against an insurer for a breach of contract to provide coverage of medical and hospital expenses, an attorney fee award was authorized by subsection (3) of this section where although an insurance policy was issued prior to the 1986 amendment of this section, the application of the attorney fee provision was triggered only by the commencement of litigation after the amendment had become effective. Eriksen v. Blue Cross of Idaho Health Servs., Inc., 114 Idaho 485, 778 P.2d 815 (Ct. App. 1989).

Where a petition did not request a monetary judgment, rather, it sought a review of the decision of the board of county commissioners, and asked for declaratory and injunctive relief, and no written demand for payment of an amount less than $25,000 [now $35,000] was made, this section was, therefore, inapplicable. Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Comm'rs, 122 Idaho 67, 831 P.2d 535 (1992).

There must be a commercial transaction between the parties for attorney fees to be awarded. To the extent prior case law may be read to mandate an award of attorney fees to the prevailing party when the other party has claimed fees pursuant to paragraph (3), that interpretation is disavowed. Great Plains Equip., Inc. v. Northwest Pipeline Corp., 136 Idaho 466, 36 P.3d 218 (2001).

Two stages of analysis are utilized to determine whether a prevailing party can avail itself of paragraph (3): (1) there must be a commercial transaction that is integral to the claim; and (2) the commercial transaction must be the basis upon which recovery is sought. It has long been held that the critical test is whether the commercial transaction comprises the gravamen of the lawsuit; the commercial transaction must be integral to the claim and constitute a basis on which the party is attempting to recover. Great Plains Equip., Inc. v. Northwest Pipeline Corp., 136 Idaho 466, 36 P.3d 218 (2001).

In the context of a claim for attorney fees, if more than one claim is pled, there can be more than one "gravamen," and attorney fees can still be

awarded for a specific claim, if a claim is of the type covered by paragraph (3) of this section, even though a claim is covered by other theories that would not have triggered application of the statute. Moreover, paragraph (3) cannot be invoked if the commercial transaction is between parties only indirectly related. Great Plains Equip., Inc. v. Northwest Pipeline Corp., 136 Idaho 466, 36 P.3d 218 (2001).

Paragraph (3) does not authorize the awarding of attorney fees every time a commercial transaction is connected with the case. The test is whether the commercial transaction constitutes the essential part of the lawsuit. Thus, although there were commercial transactions between the two parties and other individuals or companies, but not between the parties themselves, attorney fees could not be awarded. AG Servs. of Am., Inc. v. Kechter, 137 Idaho 62, 44 P.3d 1117 (2002).

Award of attorney's fees was mandatory because a dispute between property purchasers and lenders involved a commercial transaction; the commercial transaction was integral to the claim. Grover v. Wadsworth, 147 Idaho 60, 205 P.3d 1196 (2009).

While a business company was not entitled to an award of attorney fees for the company's defamation claim, the company was entitled to an award of attorneys fees for the company's breach of contract claim, as the gravamen of that claim was the contract between the parties. However, because the district court did not allocate the attorney fees between the claims, remand for apportionment of the attorney fees was necessary. Dickinson Frozen Foods, Inc. v. J.R. Simplot Co., 164 Idaho 669, 434 P.3d 1275 (2019).

Assignment of Proceeds.

A cause of action founded solely upon the assignment of proceeds from a lawsuit was not an action covered by subsection (2) (now (3)) of this section. Bonanza Motors, Inc. v. Webb, 104 Idaho 234, 657 P.2d 1102 (Ct. App. 1983).

An action brought by a realtor for breach of a real estate listing contract was an action brought on a contract of employment and could not be "stretched" to fit under subsection (2) (now (3)) of this section, despite the defendant's argument that her defense of the action was essentially the same

as the defense of a civil action to recover upon a note, bill or negotiable instrument. Barnes v. Hinton, 103 Idaho 619, 651 P.2d 553 (Ct. App. 1982).

Award Improper.

In action by water authority against consumers for unpaid assessments, the award of costs and attorney fees to water authority was error where authority was not the prevailing party, since it had made an excessive demand although the proper amount due had been tendered by the consumers, and where authority was not allowed by its permit to sell water, but was only allowed to charge for maintenance of the water system, so that no sale of goods, wares or merchandise was involved within the meaning of subsection (2) (now (3)) of this section. Yellow Pine Water User's Ass'n v. Imel, 105 Idaho 349, 670 P.2d 54 (1983).

Where third-party defendant offered no defense, called no witnesses, presented no supported legal argument in favor of its position, and it did not vigorously cross-examine any of the witnesses called by other parties in an attempt to support its defense, an award of attorney fees under subsection (2) (now (3)) of this section, § 12-121, and Idaho R. Civ. P. 54(e)(1) was proper. Del Milam & Sons v. Bailey, 107 Idaho 587, 691 P.2d 1202 (1984).

Award of attorney fees under subsection (3) of this section was erroneous in an action to recover for alleged professional negligence of an architect. Smith v. David S. Shurtleff & Assocs., 124 Idaho 239, 858 P.2d 778 (1993).

District court order awarding attorney fees to plaintiff-respondent was vacated as this section was held to be inapplicable where action was based on claims of breach of fiduciary duty and reimbursement of funds defendant paid herself erroneously as a bonus upon her departure from plaintiff's employ. Property Mgt. W., Inc. v. Hunt, 126 Idaho 897, 894 P.2d 130 (1995).

Where a contract claim, which is covered in subsection (3) of this section, is combined with a conversion claim, which is outside the scope of this section, and the two are not separable, the fact that the conversion claim arose out of a commercial transaction is not sufficient to apply this section and award attorney fees. Brooks v. Gigray Ranches, Inc., 128 Idaho 72, 910 P.2d 744 (1996).

Because on appeal it was determined that buyers had the right to revoke acceptance against automobile dealer, lower court's judgment awarding attorney fees and costs to dealer was reversed, as dealer could no longer be considered a prevailing party. Griffith v. Latham Motors, Inc., 128 Idaho 356, 913 P.2d 572 (1996).

Award of attorney fees under Idaho Civil Procedure Rules 54(e)(1) through 54(e)(9) or § 12-121 or this section to mother and state as prevailing parties in paternity action against defendant was improper as mother did not plead any specific amount of damages as required under subdivision (1) of this section and the magistrate made no findings that father's defense of the action was frivolous or unreasonable as required under Idaho R. Civ. P. 54(e)(1). Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

Because § 41-1839 was amended to include subsection (4) which excludes award of attorney fees under this section in actions between insureds and insurers involving disputes arising under any policy of insurance, and the legislature expressly stated its intent that this act apply to all cases pending at the time of passage and approval, district court's award of attorney fees in suit brought against insurer by seed cooperative was reversed and request for fees on appeal denied to seed cooperative and umbrella insurer. Union Whse. & Supply Co. v. Illinois R.B. Jones, Inc., 128 Idaho 660, 917 P.2d 1300 (1996).

An award of attorney fees to employer for defending against employee's claims for breach of express and implied contract terms, including a claim for violation of the implied covenant of good faith, should not have included fees attributable to the defense of employee's cause of action for age discrimination; that claim, though rooted in the employment relationship, sought recovery for infringement of rights created not by contract but by statutes. Atwood v. Western Constr. Inc., 129 Idaho 234, 923 P.2d 479 (Ct. App. 1996).

The trial court properly denied attorney fees because the plaintiff had not provided the trial court with a meaningful segregation of the attorney fees which were incurred in pursuing a commercial contract claim against the defendant. Weaver v. Searle Bros., 129 Idaho 497, 927 P.2d 887 (1996).

Attorney fees are not available when the claim is based on a statutory provision, even when the underlying action depends on contract. Shay v. Cesler, 132 Idaho 585, 977 P.2d 199 (1999).

Where an attorney fee award was made solely on a count relating to the plaintiff's wage claim, and the gravamen of the suit was not violation of an employment contract but violation of a statute, this section did not apply, and the award of fees was reversed. Shay v. Cesler, 132 Idaho 585, 977 P.2d 199 (1999).

Where plaintiffs who claimed liens were not successful in their claims, and where neither out-of-state bond statutes nor the theory of unjust enrichment provided relief to any of them, awards of attorney fees to the plaintiffs were not appropriate. Great Plains Equip., Inc. v. Northwest Pipeline Corp., 132 Idaho 754, 979 P.2d 627 (1999).

Award of attorney fees was reversed because this section does not carry with it a reciprocal right to an award of attorney fees to a defendant who prevails in the suit, and the complaint did not recite any authority, either statute or rule, which would entitle the plaintiff to an award of fees. D.A.R., Inc. v. Sheffer, 134 Idaho 141, 997 P.2d 602 (2000).

Although attorney fees are awardable under subsection (3) of this section when a claim is initiated to recover on an open account, because plaintiff hospital's claim against the estate was not founded upon a contractual open account, the award of attorney fees to plaintiff hospital was reversed. Bingham Mem. Hosp. v. Boyd, 134 Idaho 669, 8 P.3d 664 (Ct. App. 2000).

Where defendant general contractor entered a joint venture with plaintiff unlicensed contractor to bid projects jointly as a public works contractor under the general contractor's name pursuant to an oral agreement to divide all profits equally, the commercial transaction was illegal and neither party could claim the benefit of subsection (3) of this section; further, as the award of the district court was based upon the exception to the illegality doctrine for fraud which sounds in tort, no basis for the award existed under subsection (3) of this section. Trees v. Kersey, 138 Idaho 3, 56 P.3d 765 (2002).

Attorney fees related to the teacher's claim after his contract was not renewed, which related to public policy and the Idaho Constitution were

improper; however he could recover fees to the extent they related to his other, breach of contract claim. Willie v. Bd. of Trs., 138 Idaho 131, 59 P.3d 302 (2002).

Because a farm's action under the Commodity Indemnity Account Program (CIAP) was independent, as opposed to derivative, of a judgment entered in the district court against a bonded warehouse, the attorney fees the farm incurred in pursuing its CIAP claim were not "incurred in attempting to collect on the judgment"; therefore, the district court's award of postjudgment attorney fees to the farm pursuant to subsection (5) of this section was reversed. Griff, Inc. v. Curry Bean Co., 138 Idaho 315, 63 P.3d 441 (2003).

In a lender's suit against a funding company and its president, seeking to pierce the corporate veil and to collect from the president personally on a prior judgment, fees and costs were improperly awarded to the president where the suit on the judgment was not one of the enumerated actions identified in paragraph (3). Rahas v. Ver Mett, 141 Idaho 412, 111 P.3d 97 (2005), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., — Idaho —, 265 P.3d 502, 2011 Ida. LEXIS 149 (2011).

Arbitration panel did not have authority to award attorney fees pursuant to American Arbitration Association (AAA) rules incorporated into an asset purchase agreement and Idaho statutory law because the agreement clearly stated that AAA rules governed procedural rather than substantive issues. Idaho law, which included the Idaho Uniform Arbitration Act, § 7-901 et seq., applied to interpretation of the parties' contract terms under the agreement and the parties contracted for a zero dollar amount or claim with respect to an award of attorney's fees. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Neither party was permitted to benefit from an award of attorney's fees by statute or the attorney's fees provision in a real estate purchase and sale agreement, because the agreement orchestrated by a real estate broker, and executed by the buyer and the seller, was fraudulent and violated public policy. Kosmann v. Gilbride, 161 Idaho 363, 386 P.3d 504 (2016).

Attorney fees cannot be awarded for in an action attempting to enforce an illegal agreement. Taylor v. Taylor, 163 Idaho 910, 422 P.3d 1116 (2018).

— Insurance Suit.

Section 41-1839 does not preclude an award of fees under subsection (3) of this section. Continental Cas. Co. v. Brady, 127 Idaho 830, 907 P.2d 807 (1995).

Where an insured effectively assigned to the plaintiff his right as an insured to collect money due under a policy and to sue the defendant insurance company for breach, the plaintiff stood in the shoes of the insured in a dispute arising under an insurance policy, and the trial court erred in awarding attorney fees under subsection (3) of this section. J.R. Simplot Co. v. Western Heritage Ins. Co., 132 Idaho 582, 977 P.2d 196 (1999).

Even though a complaint against an insurer was not amended to assert the plaintiff's status as an assignee of the insured until after the enactment of an amendment to 41-1839(4), the fact that the legislature had expressly stated that the amendment was retroactive, applying to all cases pending at the time of its passage and approval, meant that the mandatory prevailing party fee award applicable under subsection (3) of this section to commercial transaction disputes would be barred in a case where the assignee could be characterized as an insured. J.R. Simplot Co. v. Western Heritage Ins. Co., 132 Idaho 582, 977 P.2d 196 (1999).

Award of Fees, When.

This section is mandatory in its nature; the court is therefore compelled to award some attorney's fees to the plaintiffs under the statute. Clement v. Franklin Inv. Group, Ltd., 689 F. Supp. 1575 (D. Idaho 1988).

Subsection (3) of this section generally mandates an award of attorney fees to the prevailing party on appeal as well as at trial. Bott v. Idaho State Bldg. Auth., 122 Idaho 471, 835 P.2d 1282 (1992); Farm Credit Bank v. Stevenson, 125 Idaho 270, 869 P.2d 1365 (1994).

Defendant, initially awarded default judgment in his breach of contract counterclaim and prevailing on plaintiff's appeal to set aside judgment on Idaho R. Civil P. 60(b) grounds, was awarded costs and attorney fees. In an action on a contract, subdivision (3) of this section generally mandates an award of attorney fees to the prevailing party on appeal as well as at trial. Tyler v. Keeney, 128 Idaho 524, 915 P.2d 1382 (Ct. App. 1996).

Attorney fees may be awarded under this section for appeals, as well as for trial work. Tentinger v. McPheters, 132 Idaho 620, 977 P.2d 234 (Ct. App. 1999).

Where neither party prevailed on the issues they respectively raised on appeal, neither was entitled to an award of attorney fees under this section. General Auto Parts Co. v. Genuine Parts Co., 132 Idaho 849, 979 P.2d 1207 (1999).

Where the most significant issue in the case was whether the plaintiff was entitled to the market price for rejectable potatoes, and where the plaintiff prevailed on that issue both below and on appeal, the plaintiff was entitled to fees below and fees and costs on appeal. Licklyey v. Max Herbold, Inc., 133 Idaho 209, 984 P.2d 697 (1999).

When a party requesting attorney fees on appeal cites the statutes but does not present argument, the court will not address the request. Carl H. Christensen Family Trust v. Christensen, 133 Idaho 866, 993 P.2d 1197 (1999).

Under subsection (3) of this section, the prevailing party in a civil action involving a commercial transaction is entitled to an award of reasonable attorney fees; there is a two-stage analysis necessary to determine whether a prevailing party is so entitled to an award: (1) the commercial transaction must be integral to the claim; and (2) the commercial transaction must provide the actual basis for recovery. Iron Eagle Dev. v. Quality Design Sys., Inc., 138 Idaho 487, 65 P.3d 509 (2003).

Where a trial court on remand was instructed to determine whether a broker forfeited any or all of his development commission because he was found under a general verdict to have breached a real estate agreement with landowners, on remand the trial court had discretion to consider whether the broker was entitled to attorney fees incidental to that claim because the attorney fee was a subsidiary issue fairly comprised within the broker's substantive claim. Rockefeller v. Grabow, 139 Idaho 538, 82 P.3d 450 (2003).

In an breach of contract dispute between a bank and a livestock owner, the district court granted summary judgment for the bank, which judgment was affirmed on appeal; award of attorney fees on appeal to the bank was

proper. Lettunich v. Key Bank Nat'l Ass'n, 141 Idaho 362, 109 P.3d 1104 (2005).

Award on Appeal.

Subsection (3) of this section mandates an award of attorney fees on appeal as well as in the trial court. Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

Litigant who prevailing on appeal in a breach of contract action was entitled to recovery appellate attorney fees. Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

Customers' motion for attorney's fees on appeal pursuant to subsection (3) of this section was denied pending a remand; although the customers prevailed on appeal and summary judgment in favor of a company was reversed, it remained to be determined which party would ultimately prevail on remand. Land O'Lakes, Inc. v. Bray, 138 Idaho 817, 69 P.3d 1078 (Ct. App. 2003).

Because a home health care consultant did not challenge the dismissal of the consultant's breach of contract claim, subsection (3) of this section did not apply. Jensen v. State, 139 Idaho 57, 72 P.3d 897 (2003).

Where it remained to be seen whether the prevailing party on appeal would be the prevailing party in the action, and, therefore, entitled to attorney fees under subsection (3) of this section and Idaho App. R. 41, the district court, upon final resolution of the case, could consider fees incurred on appeal when it made an award to the prevailing party. As a matter of right, costs on appeal were awarded to the prevailing party on appeal under Idaho App. R. 40. Cox v. City of Sandpoint, 140 Idaho 127, 90 P.3d 352 (Ct. App. 2003).

In an action arising from a breach of a contract to design and construct a cabin, a wholesale supplier who prevailed on summary judgment was properly awarded costs and attorney fees pursuant to § 12-121, and the supplier was not entitled to attorney fees on appeal under this section, because it only prevailed in part. Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004).

In a contract dispute, defendants were entitled to attorney fees on appeal because they prevailed on appeal and the appeal concerned entitlement to

attorney fees and not the amount of the award. Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc., 141 Idaho 716, 117 P.3d 130 (2005).

While respondent prevailed on appeal, appellant presented a cogent challenge to the district court's reading of Idaho R. Civ. P. 37(c) and presented legitimate arguments questioning the district court's conclusion that her denial of respondents' requests to admit was unreasonable. The appeal of the Idaho R. Civ. P. 37(c) award was not frivolous and, therefore, respondent was not entitled to attorney fees on appeal. Contreras v. Rubley, 142 Idaho 573, 130 P.3d 1111 (2006).

Because the corporation's suit against the farmers was an action to recover on a commercial transaction and the corporation was the prevailing party on appeal, it was entitled to an award of attorney's fees. J.R. Simplot Co. v. Bosen, 144 Idaho 611, 167 P.3d 748 (2006).

In corrections officers' suit based on the disclosure of personal information, where defendants were granted summary judgment, attorney fees were denied on appeal to the officers and defendants because the amount pleaded far exceeded the $25,000 [now $35,000] limit. Nation v. State, 144 Idaho 177, 158 P.3d 953 (2007).

When a property seller challenged a contract, arguing that the contract's property description did not satisfy the statute of frauds, the seller prevailed on appeal and was entitled to attorney fees on appeal. Ray v. Frasure, 146 Idaho 625, 200 P.3d 1174 (2009).

In the trout farmers' breach of a commercial sales contract action against a fish hatchery, awarding the trout farmers attorney fees after remand pursuant to their contingency fee agreement, rather than on an hourly basis as they had previously been awarded, was reasonable considering the attorney fees as a whole, despite the late switch regarding the method of computation. Griffith v. Clear Lakes Trout Co., 146 Idaho 613, 200 P.3d 1162 (2009).

This section generally allows the Idaho supreme court to award reasonable attorney fees on appeal that are incurred in connection with the effort to secure a reasonable amount of attorney fees. However, for subsection (5) to apply, the attorney fees sought must have been "incurred in attempting to collect on the judgment." When attempting to collect on a

judgment, a party may receive attorney fees and costs pursuant to subsection (5), if that party would have been awarded attorney fees and costs under subsection (1), (2), (3), or (4) in the underlying proceeding. A request for postjudgment attorney fees under subsection (5) is not a proceeding that would satisfy the requirements of subsection (1), (2), (3), or (4) Med. Recovery Servs., LLC v. Siler, 162 Idaho 30, 394 P.3d 73 (2017).

Award Proper.

When an order awarding attorney's fees is correct, but has been entered upon an erroneous theory, it will be upheld upon the proper theory. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

Where the party successfully defended against the action for recovery on the note, he was entitled to reasonable attorney fees. Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

Where the city's contract for the supplying and installing of the secondary treatment equipment in the sewage treatment plant was for the sale of goods, as defined by the UCC, the district court did not err in awarding the city attorney fees pursuant to subsection (2) (now subsection (3)) of this section. United States v. City of Twin Falls, 806 F.2d 862 (9th Cir. 1986), cert. denied, 482 U.S. 914, 107 S. Ct. 3185, 96 L. Ed. 2d 674 (1987).

Where the judge heard argument and received affidavits regarding a reasonable attorney fee and he determined that the fees requested were appropriate in light of extensive discovery work and pretrial hearings, the judge did not abuse his discretion. Davidson v. Beco Corp., 112 Idaho 560, 733 P.2d 781 (Ct. App. 1986), modified on other grounds, 114 Idaho 107, 753 P.2d 1253 (1987).

In a suit based upon an alleged contract for the sale of goods and one involving an alleged guaranty, the prevailing parties were entitled to awards of attorney fees, even though no liability under the contract or guaranty was established. Twin Falls Livestock Comm'n v. Mid-Century Ins. Co., 117 Idaho 176, 786 P.2d 567 (Ct. App. 1989).

Where lessee of farm failed to present a persuasive argument that the district court erred in ordering farm equipment contractor, instead of the lessor of farm, to pay the costs and attorney fees expended by lessee in

successfully defending against the claims of contractor, the district court's order that contractor pay lessee's costs and attorney fees was affirmed. Tri-Circle, Inc. v. Brugger Corp., 121 Idaho 950, 829 P.2d 540 (Ct. App. 1992).

Where plaintiff pled actual damages, including a prayer for attorney fees, and where he prayed for leave to amend his complaint to seek punitive damages in addition to actual damages sought, defendant had sufficient notice of amount of plaintiff's claim as well as his intent to seek attorney fees; thus award of attorney fees was proper. Downey Chiropractic Clinic v. Nampa Restaurant Corp., 127 Idaho 283, 900 P.2d 191 (1995).

The state made an adequate request for attorney fees under subsection (3), and since the state was the prevailing party in the appeal, the state was awarded reasonable attorney fees on appeal. Clark v. State, 134 Idaho 527, 5 P.3d 988 (2000).

Where a party alleged the existence of a contractual relationship of a type embraced by subsection (3), that claim triggered the application of the statute, and the prevailing party recovered fees even though no liability under a contract was established. Intermountain Forest Mgmt., Inc. v. Louisiana-Pacific Corp., 136 Idaho 233, 31 P.3d 921 (2001).

Subsection (3) of this section applies to attorney fees incurred on appeal as well as at trial. Intermountain Forest Mgmt., Inc. v. Louisiana-Pacific Corp., 136 Idaho 233, 31 P.3d 921 (2001).

Bidder's action against the trustee was to recover in a commercial transaction; as the prevailing party on the appeal, the trustee was entitled to an award of a reasonable attorney fee. Taylor v. Just, 138 Idaho 137, 59 P.3d 308 (2002).

Where a court stated it awarded an engineering firm attorney fees in the amount of $61,846, the record provided sufficient information to presume that the court had considered the pertinent factors of Idaho R. Civ. P. 54(e)(3); the writings submitted by the parties in connection with the claim for attorney fees addressed several of the factors listed in Idaho R. Civ. P. 54(e)(3), including the time and labor required, the novelty and difficulty of the questions, the prevailing charges for like work, that the fee was fixed, the amount involved and results obtained, and conduct that the parties alleged

unreasonably increased the cost of the litigation. Pinnacle Eng'rs v. Heron Brook, LLC., 139 Idaho 756, 86 P.3d 470 (2004).

Property owners, as defendants in a personal injury action, were entitled to attorney fees under subsection (4) of this section where a "claimant" referred to a prevailing party (plaintiff or defendant) claiming attorney fees in an action meeting the other requirements of the statute; the legislature used the term "plaintiff" in (4) when modifying subsection (1) but when it addressed the right to an award it used the term "claimant" which in context may be either a plaintiff or a defendant. Gillihan v. Gump, 140 Idaho 264, 92 P.3d 514 (2004).

Plaintiff's increase in the amount of damages over time did not constitute a waiver of attorney fees for purposes of subsection (4) of this section. The trial court did not abuse its discretion by awarding the victim her attorney fees. Johnson v. Sanchez, 140 Idaho 667, 99 P.3d 620 (Ct. App. 2004).

Where the employee sued his employer for breach of contract and tort claims arising from his termination, his employer, as the prevailing party upon summary judgment, was entitled to an award of $35,000 in attorney fees. The fees attributable to the defense of the contract-related claims were sufficiently isolated from fees attributable to the defense of the other claims to make the award of attorney fees calculable. Jenkins v. Boise Cascade Corp., 141 Idaho 233, 108 P.3d 380 (2005).

District court's award of attorney's fees to respondent was not in error because the district court did not abuse its discretion in concluding appellant had unreasonably denied certain requests to admit negligence in a vehicular accident. Contreras v. Rubley, 142 Idaho 573, 130 P.3d 1111 (2006).

In a dispute over a land sale contract, a district court did not abuse its discretion by awarding attorney fees under this section because the factors under Idaho R. Civ. P. 54(e)(3) were considered, itemized memoranda and affidavits of costs were analyzed, and items were removed if they were deemed excessive. P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust, 144 Idaho 233, 159 P.3d 870 (2007).

In a dispute involving the sale of a duplex, two sellers were entitled to attorney fees on appeal because they were the prevailing parties due to a

stipulated dismissal, and they prevailed on appeal on the issue of entitlement to fees and costs. Straub v. Smith, 145 Idaho 65, 175 P.3d 754 (2007).

In a collection suit, a magistrate court did abuse its discretion by awarding a debt collector $200 in attorney fees, even though the magistrate initially acted prematurely and improperly by awarding a specific amount of fees before all of the required documents were filed. Medical Recovery Servs., LLC v. Jones, 145 Idaho 106, 175 P.3d 795 (Ct. App. 2007).

Civil Action.

After the court dismissed debtors' complaint against a lender, which asserted violations of federal and state consumer protection and lending laws, the lender was not entitled to attorneys' fees under subsection (3), because, while the debtors' action was a civil action, it was not the type of civil action, i.e., a civil action to recover on a note or negotiable instrument, for which subsection (3) authorizes the recovery of attorneys' fees. Beach v. Wells Fargo Bank, NA (In re Beach), 2011 Bankr. LEXIS 4027 (Bankr. D. Idaho Oct. 19, 2011).

Commercial Disputes.

Subsection (2) (now (3)) of this section creates no favored class and does not impose a penalty and the determination of a reasonable fee under this statute should not be colored by characterizing the award as a penalty. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

The function of subsection (2) (now (3)) of this section is to allocate attorney fees as an expense of resolving certain commercial disputes through the courts; it is not to allocate fees for resolving appellate disputes over fee amounts. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

By not specifically invoking subdivision (3) of this section, the prevailing party in a purchase agreement dispute, a commercial dispute, never gave the district court a fair opportunity to decide whether the attorney fees could be awarded under an Idaho fee-shifting statute, in a case governed by New York law. Van Nelson Corp. v. Westwood Mall Assocs., 126 Idaho 401, 884 P.2d 414 (1994).

Commercial Transaction.

An action for declaratory judgment, and a counterclaim for specific performance and damages, based on allegations of breach of contract constituted a commercial transaction under subsection (3) of this section, even though the court held there was no contract. Clement v. Franklin Inv. Group, Ltd., 689 F. Supp. 1575 (D. Idaho 1988).

Where landowners, whose irrigation water crossed certain property, filed a complaint against defendant seeking an adjudication of the respective parties' water rights and a permanent restraining order prohibiting defendant from interfering with their diversion and use of water, where defendant was not the owner of the property in question, and where, as a result of this a temporary restraining order was vacated and the action brought against defendant was dismissed, such a legal action did not pertain to a commercial transaction as described under subsection (3) of this section and defendant was not entitled to fees thereunder. Durrant v. Christensen, 117 Idaho 70, 785 P.2d 634 (1990).

An award of attorney's fees is not warranted every time a commercial transaction is remotely connected with a case. Rather, the test is whether the commercial transaction comprises the gravamen of the lawsuit. Attorney's fees are not appropriate under subsection (3) of this section unless the commercial transaction is integral to the claim and constitutes the basis upon which the party is attempting to recover. Brower v. E.I. DuPont De Nemours & Co., 117 Idaho 780, 792 P.2d 345 (1990).

Even though an action arose in 1985, where the action was filed on February 27, 1987, the 1986 amendment to subsection (3) of this section providing for recovery for prevailing party seeking recovery on a commercial transaction would be applicable. Ramco v. H-K Contractors, 118 Idaho 108, 794 P.2d 1381 (1990).

Where the resolution sought by plaintiffs involved a dispute arising from a commercial transaction that had not taken place, there was no commercial transaction between the parties that could be the basis for an attorney fee award under this section. Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

It is well settled that one who successfully defends against the enforcement of a contract, when the gravamen of the transaction is a commercial transaction, nevertheless may be entitled to attorney fees even

though the court has ruled that no contract exists or it is unenforceable. Lawrence v. Jones, 124 Idaho 748, 864 P.2d 194 (Ct. App. 1993).

An action against the Idaho public utilities commission by interstate carriers challenging registration renewal fee did not fall within the meaning of "commercial transaction" as used in subsection (3) of this section. Owner-Operator Indep. Drivers Ass'n v. Idaho Pub. Utils. Comm'n, 125 Idaho 401, 871 P.2d 818 (1994), modified on other grounds, Roe v. Harris, 128 Idaho 569, 917 P.2d 403 (1996).

In action to recover on loan where plaintiff prevailed only on the equitable ground of unjust enrichment, the ground of "commercial transaction" between plaintiff and defendant, to which second defendant was not directly a party, did not serve as the basis for recovery because it could not be said that the case revolved around a commercial transaction sufficient to implicate the terms of subsection (3). Hausam v. Schnabl, 126 Idaho 569, 887 P.2d 1076 (Ct. App. 1994).

Nature of suit by party claiming that it was a third party beneficiary of a contract between contractor and subcontractor's successor was construed by the court of appeals to be sufficiently based on a commercial transaction to warrant an award of fees under this section. Cannon Bldrs., Inc. v. Rice, 126 Idaho 616, 888 P.2d 790 (Ct. App. 1995).

The principle that where a party alleges the existence of a contractual relationship of a type embraced by subsection (3) of this section, that claim triggers the application of this section and a prevailing party may recover fees even though no liability under a contract was established, could be applied in the instant case, where the action was one to recover in a commercial transaction, regardless of the proof that the commercial transaction alleged, did, in fact occur. Magic Lantern Prods., Inc. v. Dolsot, 126 Idaho 805, 892 P.2d 480 (1995).

Because the case, which arose from a failed venture to develop a Christian retreat, did not involve a contract for the sale of goods or services, that part of this section was inapplicable, and that as to whether or not a commercial transaction was apparent in the instant case, the proper inquiry was whether or not the commercial transaction composed the gravamen of the lawsuit and was integral to the claim and constituted the basis upon which the party was attempting to recover; as the district court found the

gravamen of the instant case was fraud, refusing to award fees was proper. Spence v. Howell, 126 Idaho 763, 890 P.2d 714 (1995).

A transaction for commercial farming operations was found to be a "commercial transaction" under this section, and the lease between parties allowed defendants to utilize the property for the purpose of operating a commercial cattle ranch; therefore, the lease was a commercial transaction, and the defendants were entitled to reasonable attorney's fees. Herrick v. Leuzinger, 127 Idaho 293, 900 P.2d 201 (Ct. App. 1995).

An accounting, a winding up of the partnership affairs, and a distribution of the partnership assets did not constitute a "commercial transaction" under this section. Kelly v. Silverwood Estates, 127 Idaho 624, 903 P.2d 1321 (1995).

An award of attorney fees is not warranted every time a commercial transaction is remotely connected with a case; rather, the test is whether the commercial transaction comprises the gravamen of the lawsuit, as attorney fees are not appropriate under this section unless the commercial transaction is integral to the claim and constitutes the basis upon which the party is attempting to recover. Kelly v. Silverwood Estates, 127 Idaho 624, 903 P.2d 1321 (1995).

Because the gravamen of action was a "commercial transaction," insurer was entitled to an award of attorney fees and fact that insurer brought the action rather than waiting to be sued had no bearing on issue. Continental Cas. Co. v. Brady, 127 Idaho 830, 907 P.2d 807 (1995).

Where a party's claim is based on the statutory penalties provided in former § 30-1-52 for the corporation's failure to provide access to the corporate records, the gravamen of the suit is the statutory provision and not a commercial transaction, thus attorney fees should be denied under subdivision (3) of this section. Gumprecht v. Doyle, 128 Idaho 242, 912 P.2d 610 (1995).

In action where the gravamen was plaintiff's enforcement of option to purchase commercial farming property, the basis of the action was a commercial transaction and, therefore, prevailing party was entitled to attorney's fees under subsection (3) of this section. Dennett v. Kuenzli, 130 Idaho 21, 936 P.2d 219 (Ct. App. 1997).

Given that the breach of contract claim was redressed in the arbitration proceedings, the court properly found that the plaintiff's complaint did not deal with a "commercial transaction," as contemplated by this section. Storrer v. Kier Constr. Corp., 129 Idaho 745, 932 P.2d 373 (Ct. App. 1997).

The test for the application of allowing the prevailing party in a civil action to recover on "any commercial transaction" is whether the commercial transaction comprises the gravamen of the lawsuit; that is, whether the commercial transaction is integral to the claim and constitutes the basis upon which the party is attempting to recover. Dennett v. Kuenzli, 130 Idaho 21, 936 P.2d 219 (Ct. App. 1997); Clayson v. Zebe, 153 Idaho 228, 280 P.3d 731 (2012).

This section provides for attorney fees incurred if the suit involved a commercial transaction; the district court considered the stipulation of the parties to be a commercial contract and the action for recovery of damages for the negligent performance of the contract to be a "commercial transaction". Powell v. Sellers, 130 Idaho 122, 937 P.2d 434 (Ct. App. 1997).

Where, in a case involving a commercial transaction, the supreme court reversed a jury verdict as to counts I and II, relieving defendant of liability, the question of attorney fees was a subsidiary issue fairly comprised therein and on remand the district court had the jurisdiction to consider whether defendant was the prevailing party and to make an award of costs and attorney fees. J.R. Simplot Co. v. Chemetics Int'l, Inc., 130 Idaho 255, 939 P.2d 574 (1997).

In case involving a commercial transaction, since subsection (3) of this section requires that a court hearing any action arising out of a commercial transaction shall award attorney fees to the prevailing party and such subsection has been interpreted to mandate the award of attorney fees on appeal as well as at trial, defendant, as the prevailing party on appeal, was entitled to be awarded costs and attorney fees. J.R. Simplot Co. v. Chemetics Int'l, Inc., 130 Idaho 255, 939 P.2d 574 (1997).

The present action was primarily a property dispute to determine ownership and easement rights and did not fall within the meaning of a commercial transaction under subsection (3) of this section; therefore

attorney fees were properly denied. Sun Valley Hot Springs Ranch, Inc. v. Kelsey, 131 Idaho 657, 962 P.2d 1041 (1998).

A joint venture for the purpose of maximizing the value of certain real estate is a "commercial transaction" within the meaning of this section. Tri State Land Co. v. Roberts, 131 Idaho 835, 965 P.2d 195 (Ct. App. 1998).

An action by an unsuccessful bidder on a city contract is not a "commercial transaction" under this section, as the gravamen of the action was to contest a bid by the city and there was no contract between the plaintiff and the city. Andrea v. City of Coeur d'Alene, 132 Idaho 188, 968 P.2d 1097 (Ct. App. 1998).

Attorney fees are mandatory for actions to recover on a contract relating to the purchase of services or any commercial transaction. Tentinger v. McPheters, 132 Idaho 620, 977 P.2d 234 (Ct. App. 1999).

Where an underlying action was one to recover on an alleged exclusivity contract, the action involved a commercial transaction and this section was triggered. General Auto Parts Co. v. Genuine Parts Co., 132 Idaho 849, 979 P.2d 1207 (1999).

The fact that a commercial transaction is at an end does not preclude that transaction from being integral to a claim, and where plaintiff was seeking damages for defendant's alleged breach of an agreement modifying the terms of a commercial loan, both the original loan and the alleged oral agreement were commercial transactions within the statutory definition in subsection (3) of this section. Rule Sales & Serv., Inc. v. U.S. Bank Nat'l Ass'n, 133 Idaho 669, 991 P.2d 857 (Ct. App. 1999).

Because the action was primarily a dispute over property ownership and easement rights, it did not fall within the meaning of a commercial transaction as defined in subsection (3) of this section and as applied by the courts. Baxter v. Craney, 135 Idaho 166, 16 P.3d 263 (2000).

This section did not apply where the action was primarily a dispute over whether the properties in question were conveyed in fee simple or as easements, because the question did not fall within the meaning of a commercial transaction as defined in subsection (3). C & G, Inc. v. Rule, 135 Idaho 763, 25 P.3d 76 (2001).

Test for determining whether subsection (3) of this section authorizes an award of attorney fees is whether the commercial transaction comprises the gravamen of the lawsuit. This requires that there be a commercial transaction that is integral to the claim, and that the commercial transaction is the basis upon which recovery is sought. Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

Attorney fees are not authorized under subsection (3) of this section, where a tort claim is involved, even if the claim is intimately associated with a commercial transaction. Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

In a tort action, a painter and attorney were not entitled to attorney fees under subsection (3) of this section, despite the fact that the underlying action was based on a commercial transaction; that statute does not apply to a claim for attorney fees when the action involves a tort, even if the underlying action was a commercial transaction. McPheters v. Maile, 138 Idaho 391, 64 P.3d 317, cert. denied, 540 U.S. 888, 124 S. Ct. 269, 157 L. Ed. 2d 159 (2003).

Attorney fees were awardable to the witness under subsection (3) of this section for successfully defending an action to recover on a note; the appellate court would not consider whether the district court erred in holding that this was an action on a commercial transaction because, even if that was in error, the credit had not challenged the district court's alternative holding that this was an action to recover on a note. Bream v. Benscoter, 139 Idaho 364, 79 P.3d 723 (2003).

Attorney's fees are not appropriate under subsection (3) of this section unless the commercial transaction is integral to the claim and constitutes the basis upon which the party is attempting to recover. It is of no consequence that the underlying contractual obligation is unenforceable. A prevailing party may recover attorney fees even though no liability under a contract was established or where no contract was, in fact, ever formed. Garner v. Bartschi, 139 Idaho 430, 80 P.3d 1031 (2003).

Where a trial court on remand was instructed to determine whether a broker forfeited any or all of his development commission because he was found under a general verdict to have breached a real estate agreement with landowners, on remand the broker was properly awarded attorney fees as to

his claim to recover his commission because such was a claim to recover in a commercial transaction as contemplated in subsection (3) of this section and the broker prevailed on that claim. Rockefeller v. Grabow, 139 Idaho 538, 82 P.3d 450 (2003).

Dismissal of the physician's action against the hospital seeking to force the hospital to grant him medical staff privileges was proper where the physician was not denied due process and the tribunal was impartial; further, an award of attorney fees under subsection (3) of this section was also proper because the physician's allegation of a contract between him and the hospital that was for other than personal or household purposes constituted the allegation of a commercial transaction. Miller v. St. Alphonsus Reg'l Med. Ctr., Inc., 139 Idaho 825, 87 P.3d 934 (2004).

Grant of summary judgment in favor of the company was proper where the company did not enter into any agreement or make any representation to pay the wife her community property interest in the husband's shares in the event of divorce; further, the district court did not err in denying the company an award of attorney fees pursuant to subsection (3) of this section because the case did not implicate a commercial transaction. Tolley v. THI Co., 140 Idaho 253, 92 P.3d 503 (2004).

Prospective buyer was not entitled to an award of attorney fees under subsection (3) of this section because the complaint did not allege any commercial transaction between him and the developer, it simply alleged that by his conduct the buyer interfered with a commercial transaction between the developer and the landowners. With respect to the landowners, the complaint did allege a commercial transaction, and because the landowners' counterclaim still remained to be resolved, the district court had not yet determined whether they were prevailing parties in the lawsuit, such that if the district court determined that they were the prevailing parties once their counterclaim was resolved, it may award them attorney fees. Lexington Heights Dev., LLC v. Crandlemire, 140 Idaho 276, 92 P.3d 526 (2004).

Attorney fees were properly awarded only against those defendants who were engaged in a commercial transaction with plaintiff; such award applied to both the trial and appellate attorney fees. Gunter v. Murphy's Lounge, L.L.C., 141 Idaho 16, 105 P.3d 676 (2005).

Attorney fees were properly awarded under this section in an action to enforce a restrictive employment covenant; the employment contract was a commercial transaction pursuant to subsection (3), and the fact that this was a declaratory judgment action did not preclude awarding attorney fees. Freiburger v. J-U-B Eng'rs, Inc., 141 Idaho 415, 111 P.3d 100 (2005).

Homebuilder was not entitled to an award of attorney fees where the complaint did not plead damages of $25,000 [now $35,000] or less, but sought damages trebled in such amount as shown by the evidence but not less than $15,000; pleading damages in an amount that was not less than a specified sum was not the same as pleading damages in the amount of $25,000 [now $35,000] or less. Gillespie v. Mt. Park Estates, L.L.C., 142 Idaho 671, 132 P.3d 428 (2006).

Subsection (3) of this section did not provide a basis for awarding attorney fees in a case involving the validity and location of an easement where an agreement giving rise to the easement was not a "commercial transaction" and was not an integral aspect of the dispute nor the basis upon which recovery was sought. Bedke v. Pickett Ranch & Sheep Co., 143 Idaho 36, 137 P.3d 423 (2006).

Customer was entitled to a fee award with respect to his fraud claim, as he was seeking recovery of damages sustained as a result of the commercial transaction involved in the case; a transaction involving the sale of 26,500 pairs of jeans was not made for personal or household purposes, but was a business or commercial transaction, as the customer obviously intended to market the jeans rather than wear them. Blimka v. My Web Wholesaler, LLC., 143 Idaho 723, 152 P.3d 594 (2007).

In a case involving a dispute over an oral contract for the sale of land between two tenants in common, attorney fees were awarded to a seller because the transaction was commercial in nature, since the property was acquired in part for logging. Watson v. Watson, 144 Idaho 214, 159 P.3d 851 (2007).

In an action to quiet title, neither party could receive attorney's fees, because "any commercial transaction," for the purposes of subsection (3), does not include real estate transactions or issues involving the ownership of property. Anderson v. Rex Hayes Family Trust, 145 Idaho 741, 185 P.3d 253 (2008).

The critical test in determining whether a civil action is for a commercial transaction is whether the commercial transaction comprises the gravamen of the lawsuit; it must be integral to the claim and constitute the basis upon which the party is attempting to recover. Johannsen v. Utterbeck, 146 Idaho 423, 196 P.3d 341 (2008).

Where a party alleges the existence of a contract that would be a commercial transaction under subsection (3), that claim triggers the application of this section, and the prevailing party may recover attorney fees, even if no liability under the contract is established. Peterson v. Shore, 146 Idaho 476, 197 P.3d 789 (Ct. App. 2008).

The commercial transaction ground in subsection (3) neither prohibits a fee award for a commercial transaction that involves tortious conduct, nor does it require that there be a contract. Kilborn v. Haun (In re Haun), 396 B.R. 522 (Bankr. D. Idaho 2008).

Subsection (3) does not require that there be a contract between the parties before this section is applied; subsection (3) only requires that there be a commercial transaction. Univ. of Idaho Found., Inc. v. Civic Partners, Inc. (In re Univ. Place/Idaho Water Ctr. Project), 146 Idaho 527, 199 P.3d 102 (2008); Farrell v. Whiteman, — Idaho —, 268 P.3d 458 (2012).

Case was brought by the mortgage company to eject the owners from their residence, and the owners counterclaim sought to contest the foreclosure sale of their residence; this was not an action to recover in a commercial transaction and the company could not recover attorney fees on appeal pursuant to this section, even if they were the prevailing party on appeal. PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180 (2009).

Respondents, who prevailed, were entitled to an award of attorney fees on appeal; the appeal arose from a dispute over the parties' respective rights upon termination of a joint venture, which fell under the definition of a "commercial transaction." Vreeken v. Lockwood Eng'g, B.V., 148 Idaho 89, 218 P.3d 1150 (2009).

Although § 19-2518 authorizes a collector to pursue a money judgment, for a delinquent fine, against a defendant/debtor as though it were in a civil action, the basis for that action is a criminal judgment that resulted from a

criminal proceeding, not a commercial transaction; thus, subsection (3) of this section is inapplicable. Collection Bureau, Inc. v. Dorsey, 150 Idaho 695, 249 P.3d 1150 (2011).

In an adversary proceeding in a bankruptcy case, a creditor was not entitled to recover attorneys' fees from another creditor under subsection (3). The parties had no relationship before the adversary proceeding; the fact that the debtors did business with both parties was insufficient to establish the existence of the type of commercial transaction warranting attorneys' fees under the statute. J.D. Heiskell Holdings, L.L.C. v. Gerratt (In re Gerratt), 2011 Bankr. LEXIS 1690 (Bankr. D. Idaho May 9, 2011).

Bailment, whether express or implied, constitutes a commercial transaction which serves as the basis upon which a party may recover attorneys' fees. Bridge Tower Dental, P.A. v. Meridian Computer Ctr., Inc,, 152 Idaho 569, 272 P.3d 541 (2012).

Hiring an attorney to negotiate the end of a marriage is a personal transaction, not a commercial transaction. McCormick Int'l USA, Inc. v. Shore, 152 Idaho 920, 277 P.3d 367 (2012).

The prevailing party is entitled to an award of attorney fees under subsection (3) where the action is one to recover in a commercial transaction, regardless of proof that the commercial transaction alleged did, in fact, occur. O'Shea v. High Mark Dev., LLC, 153 Idaho 119, 280 P.3d 146 (2012).

Following the reversal of a decision enforcing a German money judgment against the defendant, based on a promissory note, the defendant was not entitled to an award of attorney fees, as the proceeding was one seeking to grant recognition of the German judgment and was not an action based on a commercial transaction. Markin v. Grohmann, 153 Idaho 223, 280 P.3d 726 (2012).

District court properly denied a printing business costs and attorney's fees pursuant to subsection (3), where testimony showed that there were no contracts between the business and the utility company that supplied septic services to the industrial park where the business leased space, and the third party beneficiary agreement upon which the business's claims were based

was not a commercial transaction between the parties, Printcraft Press, Inc. v. Sunnyside Park Utils., Inc., 153 Idaho 440, 283 P.3d 757 (2012).

Borrower was denied appellate attorney's fees under this section, because a home loan modification is not a commercial transaction. Fannie Mae v. Hafer, 158 Idaho 694, 351 P.3d 622 (2015).

In a negligence case, an engineering company was able to recover attorney fees after prevailing on appeal, because the services provided were relating to a commercial transaction, not personal or household services. Am. Bank v. BRN Dev., Inc., 159 Idaho 201, 358 P.3d 762 (2015).

District court properly awarded attorney fees to a contractor as the prevailing party in a declaratory judgment action filed by the Idaho transportation department to determine rights of the parties with respect to a contract for highway construction services. The action qualified as a dispute involving a commercial transaction where it was based upon the enforceability of a covenant contained in a highway construction contract about resorting to arbitration without first exhausting a review process specified in the contractual provisions; the contractor was also entitled to an award of attorney fees and costs on appeal under the same section given the affirmation of the district court's award Idaho Transp. Dep't v. Ascorp, Inc., 159 Idaho 138, 357 P.3d 863 (2015).

District court properly awarded a purchaser attorneys fees, because a commercial transaction was the gravamen of the sellers' cause of action. Without the commercial transaction to sell timber, a representative for the purchaser would have never visited the sellers' property, and the sellers' claim that he voluntarily assumed a duty to identify property lines would have never arisen. Stevens v. Eyer, 161 Idaho 407, 387 P.3d 75 (2016).

Title company unsuccessfully sued by a bank for negligence and breach of contract in the distribution of proceeds of a non-judicial foreclosure could not recover appellate attorney's fees against the bank based on a commercial transaction because the bank was not a party to the underlying commercial transaction. First Bank of Lincoln v. Land Title of Nez Perce Cty., Inc., — Idaho —, — P.3d —, 2019 Ida. LEXIS 206 (Nov. 18, 2019).

In a suit based on a title company's failure to distribute proceeds of a non-judicial foreclosure of a trust deed on a bank's debtor's property to the

bank, involving parties from multiple states, Idaho law applied to an award of appellate attorney's fees because (1) subsection (3) of § 12-120 was substantive law, and (2) the parties who originally selected the title company as an escrow agent understood Idaho law would apply. First Bank of Lincoln v. Land Title of Nez Perce Cty., Inc., — Idaho —, — P.3d —, 2019 Ida. LEXIS 206 (Nov. 18, 2019).

Competitive Bidding.

Where unsuccessful bidder was not seeking relief upon the basis of a contract, but instead upon the basis of a competitive bidding statute, school district and successful bidder were not entitled to attorney fees on appeal pursuant to this section. Scott v. Buhl Joint Sch. Dist. No. 412, 123 Idaho 779, 852 P.2d 1376 (1993).

Constitutionality.

The terms of subsection (3) of this section are not unconstitutionally overbroad because it applies to a clearly discernible class of transactions. Clement v. Franklin Inv. Group, Ltd., 689 F. Supp. 1575 (D. Idaho 1988).

Construction With Other Law.

National Motor Service Co. v. Walters, 85 Idaho 349, 379 P.2d 643 (1963), which held, in part, that attorney fees are not recoverable in a statutory claim and delivery action, was of no value in determining whether claim and delivery action in instant case came within the provisions of this section because this section was enacted since *National Motor Service* was decided. Building Concepts, Ltd. v. Pickering, 114 Idaho 640, 759 P.2d 931 (Ct. App. 1988).

Contingent Fee Basis.

District court was within its discretion to award attorney fees in an amount equivalent to the prevailing party's contingent fee arrangement. Lake v. Purnell, 143 Idaho 818, 153 P.3d 1164 (2007).

Contract.

A dealer's suit under § 28-23-102 to recover the value of parts returned, upon termination of the dealership agreement, is an action to recover on a "contract" relating to the sale of goods within the meaning of subsection (2)

(now (3)) of this section. MH & H Implement, Inc. v. Massey-Ferguson, Inc., 108 Idaho 879, 702 P.2d 917 (Ct. App. 1985).

Defendant's action relating to the purchase or sale of services under this section was clearly one to recover on a contract and plaintiff, in successfully defeating defendant's claim, was entitled to attorney fees pursuant to this section, even though liability under the contract was not established. Property Mgt. W., Inc. v. Hunt, 126 Idaho 897, 894 P.2d 130 (1995).

Attorney fees were not awarded to borrowers in a breach of contract action filed against a lender and a broker based on the failure to abide by a lock-in agreement regarding a certain interest rate, because the transaction was not commercial in nature: it was clearly made for personal or household purposes. Bajrektarevic v. Lighthouse Home Loans, Inc., 143 Idaho 890, 155 P.3d 691 (2007).

— Action.

For attorney fees to be recoverable under subsection (2) (now (3)) of this section the action must be one to recover on a contract relating to the purchase or sale of goods, wares or merchandise. It is not enough that the transaction between the parties relate to the purchase or sale of goods; the action itself must be one to recover on the contract. Chenery v. Agri-Lines Corp., 106 Idaho 687, 682 P.2d 640 (Ct. App. 1984).

District court was correct by not awarding defendant attorney fees; to recover attorney fees, action must be one to recover on the contract and not merely an action arising from a transaction relating to the purchase or sale of goods, and trial court twice ruled that there was no contract between defendant as manufacturer of a product and the plaintiffs as purchasers of the product from retailer. Day v. CIBA Geigy Corp., 115 Idaho 1015, 772 P.2d 222 (1989).

Not all contracts are within the scope of the statute. Jerry J. Joseph C.L.U. Ins. Assocs. v. Vaught, 117 Idaho 555, 789 P.2d 1146 (Ct. App. 1990).

In suit by architects against state building authority for breach of contract that provided for architectural and certain other services, subsection (3) of this section clearly could be applied to award attorney fees against the

authority because such action involved contract for services as well as a commercial transaction; further the fact that the provisions of subsection (3) of this section regarding contracts relating to services were not added to the section until its 1986 amendment and the definition of party did not include the state or political subdivisions thereof until the 1987 amendment of the section. Since the suit was filed after the passage of either of these amendments, as the proper function is upon the time of the filing, not the time the cause of action arose. Bott v. Idaho State Bldg. Auth., 122 Idaho 471, 835 P.2d 1282 (1992).

Since the state building authority is a public instrumentality and not an agency within the meaning of § 12-117, subsection (3) of this section and not § 12-117, is the applicable section for the awarding of attorney fees in an action brought by architects against authority for architectural services performed under contract. Since the action was not brought, pursued or defended frivolously, unreasonably or without foundation, attorney fees cannot be awarded under § 12-121. Bott v. Idaho State Bldg. Auth., 122 Idaho 471, 835 P.2d 1282 (1992).

Where a party alleges the existence of a contractual relationship of a type embraced by subsection (3) of this section, that claim triggers the application of the statute and a prevailing party may recover fees even though no liability under a contract was established. Farmers Nat'l Bank v. Shirey, 126 Idaho 63, 878 P.2d 762 (1994); Johnson v. McPhee, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

With respect to subsection (3) of this section, it is not enough that the relationship between the parties relates to the purchase or sale of goods or services, the action itself must be one to recover on the contract. Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004).

— Breach.

Where, in a claim and delivery action brought by the manufacturer to regain possession of a fabricated steel building it had shipped to the buyer, the acts of the buyer in taking possession of the merchandise without paying for it were in breach of the sales contract, and the language used in the complaint evidenced the manufacturer's intent to recover possession of the shipment as a remedy to the buyer's breach of the contract, the district court's award of attorney fees under subsection (2) (now (3)) of this section

was proper because the action was for breach of contract, not solely for claim and delivery. Building Concepts, Ltd. v. Pickering, 114 Idaho 640, 759 P.2d 931 (Ct. App. 1988).

Dairyman's action against farmer for nondelivery of hay was based entirely upon the existence of a contract. Although court held no contract existed, the failure to show a contract did not insulate dairyman from having to pay a reasonable award of attorney fees to the prevailing party. Because farmer prevailed in an action brought to recover damages for the breach of contract for the sale of hay, he was entitled to a reasonable award for attorney fees incurred in bringing the appeal. Hilt v. Draper, 122 Idaho 612, 836 P.2d 558 (Ct. App. 1992).

Where a former employee unsuccessfully appealed a summary judgment in favor of a university in the employee's action for breach of contract, where it was determined that no contract existed, the university was entitled to attorney fees per subsection (3) of this section. Huyett v. Idaho State Univ., 140 Idaho 904, 104 P.3d 946 (2004).

— Of Sale.

Although attorney fees, under subsection (2) (now (3)) of this section, could not be awarded in a claim and delivery action to recover a vehicle or its fair market value, where the defendant's counterclaim asserted a right under a contract of sale, attorney fees could be awarded to the defendant on his counterclaim. McKinney v. Kirkness, 107 Idaho 740, 692 P.2d 384 (Ct. App. 1984).

Contract to Purchase Real Property.

Litigation regarding the existence of a contract to purchase real property for the purpose of a housing development falls under subsection (3) of this section; thus, as the prevailing party in such a lawsuit, a property owner may be awarded attorney fees. Heritage Excavation, Inc. v. Briscoe, 141 Idaho 40, 105 P.3d 700 (Ct. App. 2005).

Contractual Fee Provision.

The general rule that attorney's fees cannot be recovered in an action unless authorized by statute or by express agreement of the parties precludes a court from implying a contract term allowing attorney fees to a

party to the contract. Barnes v. Hinton, 103 Idaho 619, 651 P.2d 553 (Ct. App. 1982).

In an action for breach of a real estate listing contract, the court of appeals declined to convert an express provision for award of attorney fees to one party to an implied provision for an award of attorney fees to either party since Idaho courts are not free to imply a reciprocal meaning to attorney fees provisions in contract. Barnes v. Hinton, 103 Idaho 619, 651 P.2d 553 (Ct. App. 1982).

The terms of a valid contract between the parties may provide for the award of attorney's fees and costs, even where the trial court has determined that the requesting party had not prevailed. Wash. Fed. v. Hulsey, 162 Idaho 742, 405 P.3d 1 (2017).

Counter-Claimants.

Where defendant's counterclaim was an action on an open account for sums owed him for feeding and caring for plaintiff's cattle, as prevailing party on that counterclaim, the defendant was entitled to attorney fees as a matter of statutory right and not merely in the court's discretion. Torix v. Allred, 100 Idaho 905, 606 P.2d 1334 (1980).

Criminal Cases.

A successful criminal appellant cannot recover attorney fees under this section and § 12-121 which apply to only civil actions or under Idaho App. R. 40 and 41, absent an explicit statutory authorization. State v. Roll, 118 Idaho 936, 801 P.2d 1287 (Ct. App. 1990).

Cross-Claim.

Attorney fees were awarded to prevailing codefendant in cross-claim where the original cause of action related to the purchase of grain and was an effort to recover on a "contract relating to the purchase or sale of goods." Frieberger v. American Triticale, Inc., 120 Idaho 239, 815 P.2d 437 (1991).

Declaratory Judgment.

If defendant had initially filed a suit to collect on the promissory note, defendant would have been entitled to attorney fees pursuant to subsection (3) of this section, and defendant should not be denied those attorney fees simply because the plaintiffs filed a declaratory judgment action to reduce

their liability on the note. Zener v. Velde, 135 Idaho 352, 17 P.3d 296 (Ct. App. 2000).

Demand for Payment.

Although a secured creditor was the prevailing party on appeal, making it eligible for fees, the creditor did not fulfill the necessary statutory requirements to obtain a fee award because it did not make a demand for payment between the time when collateral was sold and the time when the creditor commenced its suit. Keybank Nat'l Ass'n v. PAL I, LLC, 155 Idaho 287, 311 P.3d 299 (2013).

Denial of Award Proper.

Where the gravamen of the plaintiffs' lawsuit did not involve a commercial transaction but rather the issue of title to logs and real property, the district judge properly denied attorney fees. Bingham v. Montane Resource Assocs., 133 Idaho 420, 987 P.2d 1035 (1999).

Where this case involved an easement, there was no basis for an award of fees under the statute, and the district judge correctly denied the request. Brown v. Miller, 140 Idaho 439, 95 P.3d 57 (2004).

Attorney fees were not warranted because the landowners' written demand exceeded $25,000 [now $35,000] and, under subsection (1) of this section, in order to recover attorney fees, a written demand for the payment of the claim had to have been made at least 10 days before the commencement of the action, and a plaintiff had to plead under $25,000 [now $35,000]. Anderson v. Goodliffe, 140 Idaho 446, 95 P.3d 64 (2004).

Crop dusting business was not awarded attorney fees on its claims against the corporation because tortious interference with contract and economic prospective advantage were torts and not actions to recover on a contract. Bybee v. Isaac, 145 Idaho 251, 178 P.3d 616 (2008).

District court did not abuse its discretion in determining that there was no prevailing party, because the claimant did not prevail on the issue of dissociation, but he did prevail regarding the cost of the backhoe, and the partner did not prevail on his cross-appeal. Costa v. Borges, 145 Idaho 353, 179 P.3d 316 (2008).

Trust beneficiaries claimed that they were entitled to an award of attorney fees under an earnest money agreement; however, the trial court properly determined that the beneficiaries could not receive attorney fees because the earnest money agreement was between the trust and a real estate broker and his wife, and, therefore, the beneficiaries were not parties to the transaction. Taylor v. Maile, 146 Idaho 705, 201 P.3d 1282 (2009).

Attorney fees were properly denied where the client's complaint sought damages for breach of the settlement agreement wherein the parties agreed to settle for $37,500. The complaint did not state exactly how much money the client sought as damages against the attorney, and while it could have been inferred that the attorney's share of the settlement agreement was in fact less than $25,000 [now $35,000], such an inference did not comply with this section. Lawrence v. Hutchinson, 146 Idaho 892, 204 P.3d 532 (Ct. App. 2009).

District court did not abuse its discretion when it found that there was no prevailing party where the defendant had successfully defended some claims, but was unsuccessful on other claims, and the claims and defenses in the case were so intermixed that it was virtually impossible to attempt to reasonably apportion fees. Green River Ranches, LLC v. Silva Land Co., LLC, 162 Idaho 184, 395 P.3d 804 (2017).

Discretion of Court.

A district court's determination when awarding attorney's fees that an action was frivolously defended will not be overturned absent an abuse of discretion; however, the district court must consider all relevant factors in exercising its sound discretion. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

In determining the amount of attorney fees to award under this section, a district court is vested with discretion. Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

Although the district court was vested with the discretion to determine the amount of attorney fees to award for the appeal from the magistrate's division, the district court, sitting in its appellate capacity, was not the proper forum for determination of the amount of an award of attorney fees incurred during a trial before the magistrate, rather the magistrate

conducting the trial should have heard any objection and argument in relation to attorney fees for the trial. Bettinger v. Idaho Auto Auction, Inc., 128 Idaho 327, 912 P.2d 695 (Ct. App. 1996).

Where district court concluded that gravamen of the law suit was a commercial transaction after determining that the nature of the underlying action was in contract and considering fact that award of attorney fees was a discretionary act, court acted within boundaries of its discretion in awarding attorney fees to architect. Bott v. Idaho State Bldg. Auth., 128 Idaho 580, 917 P.2d 737 (1996).

Where court, in awarding attorney fees, considered all the factors in Idaho R. Civ. P. 54(e)(3) in arriving at the amount of attorney fees and concluded that the case was not complex, that the recovery was relatively small, and that no novel questions were involved, the court did not abuse its discretion in its award of attorney fees. Beco Constr. Co. v. Harper Contracting, Inc., 130 Idaho 4, 936 P.2d 202 (Ct. App. 1997).

Attorney's fees are not warranted under this section whenever a commercial transaction is remotely connected with the case; although the plaintiffs based their claims on two contractual theories, the main thrust of their suit clearly sounded in tort, and the court declined to award fees on that basis. Sammis v. MagneTek, Inc., 130 Idaho 342, 941 P.2d 314 (1997).

The district court's award and calculation of attorney fees was affirmed where that court recognized that the calculation was discretionary, where it acted within the outer boundaries of its discretion and consistent with the applicable legal standards, and where it arrived at its amount by an exercise of reason. Eastern Idaho Agric. Credit Ass'n v. Neibaur, 133 Idaho 402, 987 P.2d 314 (1999).

Although the prevailing party determination is discretionary in nature, this discretion must be exercised within the bounds of governing legal standards, and under some circumstances, application of these standards requires a holding that one party is the prevailing party on a particular claim as a matter of law. Sanders v. Lankford, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000).

Because the record did not establish that the district court applied the standards set forth in *Sun Valley Shopping Center v. Idaho Power Co.*, 119

Idaho 87, 803 P.2d 993, (1991) in exercising its discretion to award attorney fees, the case was remanded for the district court to consider the claim for attorney fees and to specify the basis of any award or denial of an award. Simons v. Simons, 134 Idaho 824, 11 P.3d 20 (2000).

Duplicitous.

Where the prevailing parties admitted to some duplicity in the attorney fees, although the court believed the duplicity was warranted given the complexity of the issues, the court reduced the requested fees award by the amount that the prevailing parties admitted was duplicitous. Clement v. Franklin Inv. Group, Ltd., 689 F. Supp. 1575 (D. Idaho 1988).

Ejectment Action.

A buyer of property at a foreclosure sale was not entitled to attorney fees under subsection (3) of this section, because the ejectment action was not an action to recover on a commercial transaction. Black Diamond Alliance, LLC v. Kimball, 148 Idaho 798, 229 P.3d 1160 (2010).

Employment Discrimination.

In employment discrimination claim under Idaho Human Rights Act, plaintiff was not entitled to attorney fees under this section because she prevailed only on her statutory claim, and not on her contract claim. Stout v. Key Training Corp., 144 Idaho 195, 158 P.3d 971 (2007).

Federal Courts.

Federal courts must follow state law as to attorney fees in diversity actions. United States v. City of Twin Falls, 806 F.2d 862 (9th Cir. 1986), cert. denied, 482 U.S. 914, 107 S. Ct. 3185, 96 L. Ed. 2d 674 (1987).

Broad attorney fee provision did not provide statutory authority for an award of attorney's fees to an over-secured creditor in a federal bankruptcy case. In order to recover fees under a state statute, the creditor was required to show that its claim arose under a specific state statute that had provisions for attorney's fees and costs. In re Astle, 364 B.R. 735 (Bankr. D. Idaho 2007).

Award of legal fees was authorized to a Chapter 7 debtor who, when sued by his former employer for violating a noncompetition agreement, had prevailed on the issue of whether his conduct justified nondischargeability,

under 11 U.S.C.S. § 523(a)(6), even though the former employer had prevailed on the issue of whether employee had breached the agreement. The nondischargeability issue was the crux of the case. JB Constr., Inc. v. King (In re King), 2009 Bankr. LEXIS 660 (Bankr. D. Idaho Mar. 23, 2009).

Frivolous Defense.

Attorney fees are not appropriate under § 12-121 and Idaho R. Civ. P. 54 unless all claims brought or all defenses asserted are frivolous and without foundation. Where there are multiple claims and multiple defenses, it is not appropriate to segregate those claims and defenses to determine which were or were not frivolously defended or pursued. The total defense of plaintiff's proceedings must be unreasonable or frivolous. Management Catalysts v. Turbo W. Corpac, Inc., 119 Idaho 626, 809 P.2d 487 (1991).

Future Commercial Ramifications.

Where the purpose of a suit was to compel a school district's performance of a perceived public duty with regard to publishing notices of various actions, in order to create a possibility of future commercial transactions benefitting a newspaper, this constituted litigation on noncommercial issues that might have future commercial ramifications, and subsection (3) of this section is inapplicable to such a situation. Idaho Newspaper Found. v. City of Cascade, 117 Idaho 422, 788 P.2d 237 (Ct. App. 1990).

Genuine Issues.

In determining whether to award costs and attorney's fees when procedural defenses raise genuine questions concerning the court's jurisdiction or the propriety of granting relief upon the record then before the court, such defenses cannot be deemed frivolous, unreasonable or without foundation. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

Grounds.

A request for attorney fees can not be granted under this section when the underlying cause of action is a wage claim brought pursuant to § 45-617. Hutchison v. Anderson, 130 Idaho 936, 950 P.2d 1275 (Ct. App. 1997).

In the context of costs and attorney fees awarded to a party under paragraph (1), the phrase "except as provided in subsections (3) and (4)" means: if it is not a commercial transaction (3) or a personal injury (4), paragraph (1) applies. Great Plains Equip., Inc. v. Northwest Pipeline Corp., 136 Idaho 466, 36 P.3d 218 (2001).

Insufficiency of Claim.

Because the various subsections of the statute require different showings, it was not sufficient that the defendant made a claim for attorney fees based on this section generally. Bingham v. Montane Resource Assocs., 133 Idaho 420, 987 P.2d 1035 (1999).

No issue was preserved for the appellate court on appeal where the record revealed that the seafood company never filed a request in the district court to either modify the arbitration decision or to request fees for the confirmation proceeding. Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003).

Illegal Transaction.

In a dispute regarding a stock redemption agreement, attorney fees under subsection (3) were not available, because the transaction was illegal. Taylor v. AIA Servs. Corp., 151 Idaho 552, 261 P.3d 829 (2011).

When the transaction at issue in a lawsuit is an illegal commercial transaction, no party to the transaction is entitled to fees under this section. Thus, a contractor could not claim the benefit of this section for fees for trial or on appeal where the contractor, a subcontractor, and a third party structured their agreements to circumvent the license requirements in § 54-1902. Harris, Inc. v. Foxhollow Constr. & Trucking, 151 Idaho 761, 264 P.3d 400 (2011).

Interest.

No prejudgment interest would accrue upon the award of costs and attorney fees; the award simply bears the judgment rate of interest of 18% from its effective date. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

Interpretation of Terms.

"Services" and the other enumerated elements of subsection (3) of this section are not limited by the words "commercial transaction." If the words preceding "commercial transaction" were treated merely as examples of the types of commercial transactions to which this section could apply, they would be no more than surplusage. Eriksen v. Blue Cross of Idaho Health Servs., Inc., 116 Idaho 693, 778 P.2d 815 (Ct. App. 1989).

Application of this section is not limited to contract actions because the latter portion of the statute does not contain any such limitation, but mandates the award of a reasonable attorney fees to the prevailing party "in any commercial transaction." City of McCall v. Buxton, 146 Idaho 656, 201 P.3d 629 (2009).

Judgment.

Although materialmen who obtained a default judgment did not cite in the judgment the statutory authority under which attorney fees were granted, they were not thereby precluded from recovering fees because they specifically pled that their lien foreclosure action arose from a commercial transaction and it was evident that the parties had engaged in a commercial transaction. Magleby v. Garn, 154 Idaho 194, 296 P.3d 400 (2013).

Lease-Option Agreements.

Where a lease-option agreement involved the lease and purchase of a dwelling for residential purposes, attorney fees could not be awarded pursuant to this section. Karterman v. Jameson, 132 Idaho 910, 980 P.2d 574 (Ct. App. 1999).

Legislative Intent.

The legislature put the term "commercial transaction" in this section, not to narrow its scope, but to extend its coverage to litigation arising from commercial disputes as well as from certain noncommercial disputes. This intent is evinced by the legislature's use of the conjunctive phrase "and in any commercial transaction." Eriksen v. Blue Cross of Idaho Health Servs., Inc., 116 Idaho 693, 778 P.2d 815 (Ct. App. 1989).

The underlying intent of this section is to help litigants obtain counsel by providing a potential source of fees in meritorious cases. Swanson & Setzke v. Henning, 116 Idaho 199, 774 P.2d 909 (Ct. App. 1989).

Lien Foreclosures.

In light of the clear legislative intent to restrict the recovery of attorney fees in a lien foreclosure to those incurred in district court, the appellate court declined to award the prevailing party attorney fees for his prosecution of a cross-appeal. Fairfax v. Ramirez, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

Homeowner who prevailed on materialman's foreclosure action was not entitled to award of attorney fees since the materialman did not plead an amount of $25,000 [now $35,000] or less. L & W Supply Corp. v. Chartrand Family Trust, 136 Idaho 738, 40 P.3d 96 (2002).

Malpractice Action.

An action for legal malpractice is a tort action, and even though the underlying transaction which resulted in the malpractice was a "commercial transaction," attorney fees under subsection (3) of this section are not authorized. Fuller v. Wolters, 119 Idaho 415, 807 P.2d 633 (1991).

Even though the underlying transaction which leads to legal malpractice is a commercial transaction, attorney fees are not authorized under this section, because an action for legal malpractice is a tort action. Rice v. Litster, 132 Idaho 897, 980 P.2d 561 (1999); Bishop v. Owens, — Idaho —, 272 P.3d 1247 (2012).

"Miller Act" Suit.

Unless there is a separate state claim at the trial level, attorneys' fees are not available in a Miller Act (40 U.S.C.S. § 2706) suit even when state law provides for such an award. United States ex rel. Leno v. Summit Constr. Co., 892 F.2d 788 (9th Cir. 1989).

Monetary Limitation.

The monetary limitation of subsection (1) of this section does not apply to subsection (2) (now (3)). Steiner v. Amalgamated Sugar Co., 106 Idaho 111, 675 P.2d 826 (Ct. App. 1984).

Sugar beet growers who successfully challenged sugar company's computations of price formula under contract were entitled to award of attorney fees under subsection (2) (now (3)) of this section, regardless of fact that amount requested exceeded $2,500 (now $35,000), and were also

entitled to award of attorney fees on appeal. Steiner v. Amalgamated Sugar Co., 106 Idaho 111, 675 P.2d 826 (Ct. App. 1984).

Where, in addition to his claim of $1,592 for return of the proceeds of the deposit check, the lessee asked for the sum of $1,400 damages per day because of the "lockout" and for $50,000 punitive damages, the amount pleaded exceeded $2,500 (now $35,000), and the lessee was not entitled to attorney fees under subsection (1) of this section. Santillanes v. Property Mgt. Servs., Inc., 110 Idaho 588, 716 P.2d 1360 (Ct. App. 1986).

This section simply gives the prevailing party a general entitlement to an award of reasonable attorney fees; it does not override a valid agreement between the parties specifically limiting the dollar amount that may be claimed and awarded. Chittenden & Eastman Co. v. Leasure, 116 Idaho 981, 783 P.2d 320 (Ct. App. 1989).

A trial court may not award attorney fees under this statute unless the amount "pleaded" in the procedural sense is $25,000 or less, even if the proof offered at trial indicates damages of $25,000 [now $35,000] or less. Pancoast v. Indian Cove Irrigation Dist., 121 Idaho 984, 829 P.2d 1333 (1992).

Because the court held that plaintiff was not entitled to attorney fees under subsection (1) of this section, and because she had asserted no other basis for an award of attorney fees, the district court did not err in refusing to include any "pre-offer" attorney fees in the determination of whether the offer of judgment exceeded the amount of recovery. Czerwinsky v. Lieske, 122 Idaho 96, 831 P.2d 564 (Ct. App. 1992).

The district judge properly denied fees to the defendant where the plaintiffs pled an amount in excess of the minimum jurisdictional limits of the court and did not plead $25,000 [now $35,000] or less. Bingham v. Montane Resource Assocs., 133 Idaho 420, 987 P.2d 1035 (1999).

Negligence Action.

In a negligence action by a bailor against a bailee to recover damages caused when the bailee crashed an airplane rented from the bailor, subsection (1) of this section was inapplicable on the pleadings since the bailor's complaint contained two counts, pleading damages of $2,000 and $4,000, respectively; subsection (2) (now (3)) of this section was

inapplicable on its face because although there was a bailment agreement, the bailor's underlying cause of action was grounded in negligence, not in contract. T-Craft Aero Club, Inc. v. Blough, 102 Idaho 833, 642 P.2d 70 (Ct. App. 1982).

Even though the contract between the defendant farm equipment company and the farm owner related to the purchase and sale of goods, the actions brought by the farm owner and his tenants were not to recover upon that contract, but to recover damages for breach of another legal duty, the duty to exercise reasonable care in installing the goods; accordingly, the farm owner and his tenants were not entitled to attorney fees under subsection (2) (now (3)) of this section. Chenery v. Agri-Lines Corp., 106 Idaho 687, 682 P.2d 640 (Ct. App. 1984).

New Item of Damage.

Even though evidence of $2,500 in property damage was not in respondent's statement of claim, it was not significant enough to constitute a waiver of his right to attorney fees, compared to the $ 20,000 demand made in the statement of claim, and since appellant's insurer disclaimed any liability for the accident, it was difficult to see how a lack of awareness of damage to the car played any part in insurer's refusal to settle prior to the commencement of the suit. Contreras v. Rubley, 142 Idaho 573, 130 P.3d 1111 (2006).

Plaintiffs' increased request for damages at trial did not constitute "a significant new item of damage" that precluded them from obtaining fees under subsection (4). Plaintiffs simply sought to recover greater amounts of damages for the items of damage listed in their respective statements of claim. Bennett v. Patrick, 152 Idaho 854, 276 P.3d 726 (2012).

Open Account.

The award of attorney's fees in a civil action to recover on an open account for services performed was proper; this section does not limit awards of attorney's fees to actions seeking to recover open accounts for the purchase of goods. Boise Truck & Equip., Inc. v. Hafer Logging, Inc., 107 Idaho 824, 693 P.2d 470 (Ct. App. 1984).

Billings submitted to a service corporation by various health care providers for services rendered did not constitute an open account under

this section and did not provide a basis for awarding attorney fees against the service corporation. Howard v. Blue Cross of Idaho Health Serv., Inc., 114 Idaho 485, 757 P.2d 1204 (Ct. App. 1987).

Because subsection (3) of this section mandates the award of attorney fees to the prevailing party in any action arising out of civil action to recover on an open account, and the burden is on the person disputing the award to show an abuse of discretion, where plaintiffs failed to provide the court with any legal authority or argument establishing an abuse of discretion by the trial court, the district court or the court of appeals, the decisions awarding attorney fees were affirmed. Eagle Water Co. v. Roundy Pole Fence Co., 134 Idaho 626, 7 P.3d 1103 (2000).

Pleading.

Since the Idaho supreme court presumes that the state legislature understood the meaning of the term "pleading" in the procedural sense when it enacted this section, the court held that a prevailing party cannot claim an entitlement to attorney fees pursuant to this section unless damages of $25,000 [now $35,000] or less actually have been pled. Cox v. Mueller, 125 Idaho 734, 874 P.2d 545 (1994).

Because subdivision (1) of this section requires a party to specify the maximum amount of damages claimed and § 5-335 forbids a personal injury plaintiff from claiming a specific amount of damages, the statutes admittedly are difficult to reconcile. Therefore, to invoke the entitlement to attorney fees pursuant to this section, the complaint should also allege that the plaintiff's claim for damages does not exceed the limit established by this section and that the plaintiff is entitled to an award of attorney fees pursuant to this section; since this allegation will not specify the precise amount of damages claimed by the plaintiff, it will not violate § 5-335. Cox v. Mueller, 125 Idaho 734, 874 P.2d 545 (1994).

The court could not award attorney fees to the department of health and welfare when it prevailed in seeking child support from a father; the department failed to indicate in its complaint whether the total reimbursement and support requested was $25,000 [now $35,000] or less and, therefore, attorney fees could not be awarded pursuant to this section. State, Bureau of Child Support v. Knowles, 128 Idaho 835, 919 P.2d 1036 (Ct. App. 1996).

Because the court places a "premium" on examining the pleadings when evaluating the applicability of this section, plaintiff was entitled to attorney fees only where it had clearly indicated that it sought to recover from the defendants an amount less than $25,000 [now $35,000] plus attorney fees. Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82, 982 P.2d 917 (1999).

Defendants adequately supported their request for fees by citing this section; they were not required to assert their request in their pleadings. Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc., 141 Idaho 716, 117 P.3d 130 (2005).

The pleading requirement of subsection (1) of this section does not apply to the awarding of attorney's fees under subsections (3) or (4). Cox v. Mulligan, 142 Idaho 356, 128 P.3d 893 (2005).

Parties need not identify in the judgment the specific subsection of this section under which attorney fees are sought when the applicable provision has been clearly identified. The appropriate inquiry is whether attorney fees were recoverable under one of the subsections at the time of the entry of judgment. Magleby v. Garn, 154 Idaho 194, 296 P.3d 400 (2013).

PostJudgment Award.

After judgment had been perfected in this case, plaintiff became a judgment creditor and no longer depended on the note as the basis of defendant's obligation; accordingly, while an award of prejudgment attorney fees was made to plaintiff without objection, subdivision (3) of this section does not provide for a postjudgment award of attorney fees; further, Idaho R. Civ. P. 54(d)(5) explicitly limits the time period in which a memorandum of costs can be filed to 14 days after the entry of judgment and in the instant action the judgment was entered on September 12, 1988, and the memorandum of costs seeking an additional award of postjudgment attorney fees was filed on June 21, 1990, nearly 21 months later. Allison v. John M. Biggs, Inc., 121 Idaho 567, 826 P.2d 916 (1992).

Where creditor was awarded attorney's fees and costs on an appeal to enforce a judgment, its remedy was exclusively under subsection (5); the less specific provisions of subsections (1) and (3) did not apply. Credit

Bureau of E. Idaho, Inc. v. Lecheminant, 149 Idaho 468, 235 P.3d 1188 (2010).

Prevailing Party.

Subsection (A) of Idaho R. Civ. P. 54(d)(1), which authorizes costs to the prevailing party, and subsection (2) (now (3)) of this section, which authorizes attorney fees to a prevailing party, are not applicable where there is no prevailing party; accordingly, where two plaintiffs and defendant were awarded portion of claims, each had made against the other, the trial court did not err in ruling that all parties should pay their own costs and attorney fees since there was no overall prevailing party. International Eng'g Co. v. Daum Indus., Inc., 102 Idaho 363, 630 P.2d 155 (1981).

The prevailing party in an action for breach of contract for the sale of wheat was entitled to a reasonable attorney fee. D.R. Curtis Co. v. Mathews, 103 Idaho 776, 653 P.2d 1188 (Ct. App. 1982).

The identification of a prevailing party rests in the trial court's sound discretion; however, a judge may not use the award or denial of attorney fees to vindicate his sense of justice beyond the judgment rendered on the underlying dispute between the parties. Evans v. Sawtooth Partners, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986).

Where the party who defaulted on the promissory note successfully resisted the recovery of a deficiency, and the district judge stated that he would not award attorney fees because he considered the case to be a "draw," with no prevailing party, even though he acknowledged having no legal basis for doing what he was doing but his own sense of justice, the action was remanded to determine whether the party prevailed in district court. Evans v. Sawtooth Partners, 111 Idaho 381, 723 P.2d 925 (Ct. App. 1986).

In general, this section mandates an award of attorney fees to the prevailing party on an appeal as well as in the trial court. Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

Where the city's contract was for the sale of goods, and the city substantially prevailed on appeal, the city was entitled to its reasonable attorney fees on appeal under this section. United States v. City of Twin

Falls, 806 F.2d 862 (9th Cir. 1986), cert. denied, 482 U.S. 914, 107 S. Ct. 3185, 96 L. Ed. 2d 674 (1987).

Where accounting firm was successful in an action to recover on accounts stated and on appeal, attorney fees were properly awarded under this section in both cases. M.T. Deaton & Co. v. Leibrock, 114 Idaho 614, 759 P.2d 905 (Ct. App. 1988).

The determination of a prevailing party involves a three-part inquiry; the court must examine (1) the result obtained in relation to the relief sought; (2) whether there were multiple claims or issues; and (3) the extent to which either party prevailed on each issue or claim. Jerry J. Joseph C.L.U. Ins. Assocs. v. Vaught, 117 Idaho 555, 789 P.2d 1146 (Ct. App. 1990).

The determination of which party has prevailed is not a matter of a mechanical measurement of the size of each party's respective recovery; instead, the trial court should analyze each claim separately, and where both parties have successfully asserted claims, the claims should be severed and costs analyzed separately for each. Ramco v. H-K Contractors, 118 Idaho 108, 794 P.2d 1381 (1990).

In a suit for breach of contract for provision of goods and services, the court did not abuse its discretion in finding that the defendant was the prevailing party on its counterclaim for the unpaid balance of the contract; even though the plaintiff had prevailed on breach of contract claim, it received less than 10% of damages it sought and the defendant received approximately 90% of the amount it sought in the counterclaim. Therefore, defendant was entitled to attorney fees. Shurtliff v. Northwest Pools, Inc., 120 Idaho 263, 815 P.2d 461 (Ct. App. 1991).

Plaintiffs were entitled to an award of fees for appeal even though defendant could ultimately be found to be the prevailing party after trial on his counterclaim. Bowen v. Heth, 120 Idaho 452, 816 P.2d 1009 (Ct. App. 1991).

The discretion given to the trial court in Idaho R. Civ. P. 41(a)(2) is not circumscribed by the prevailing party analysis that is mandated by this section and Idaho R. Civ. P. 54(d)(1)(B). Jones v. Berezay, 120 Idaho 332, 815 P.2d 1072 (1991).

Where partnership and contractor each prevailed on one of the two issues between them, but each received far less than the respective relief they sought, the court did not abuse its discretion in concluding that neither party prevailed against the other. Weaver v. Millard, 120 Idaho 692, 819 P.2d 110 (Ct. App. 1991).

In action against bank for payment of forged checks where jury found that, in all but one instance, bank used ordinary care in the payment of forged checks, the bank was the prevailing party and entitled to attorney fees under subsection (3) of this section; also, on appeal, where appellate court affirmed lower court judgment verdict, bank was the prevailing party and entitled to attorney fees under subsection (3) of this section. Basterrechea Distrib., Inc. v. Idaho State Bank, 122 Idaho 572, 836 P.2d 518 (1992).

Seller's counterclaim was an action to recover on a contract for the sale of goods. Because the sellers prevailed on their claim below, and because the judgment of the district court on the contractual issue was affirmed, sellers were the prevailing parties on appeal and were, thus, entitled to an award of attorney fees and costs in both the lower court and on appeal. Christensen v. Ransom, 123 Idaho 99, 844 P.2d 1349 (Ct. App. 1992).

Where church was awarded an injunction against pastor preventing pastor from conducting any church business and from coming onto church premises, and pastor was awarded damages in his countersuit for wrongful termination, pastor was not a prevailing party for purposes of attorney fees under this section or § 12-121. Fellowship Tabernacle, Inc. v. Baker, 125 Idaho 261, 869 P.2d 578 (Ct. App. 1994).

In action involving contract dispute which arose from remodeling project that plaintiff performed on a residential home for defendant where neither party prevailed on appeal, attorney fees under this section would not be awarded. Baker v. Boren, 129 Idaho 885, 934 P.2d 951 (Ct. App. 1997).

In a contempt proceeding brought by a special master for failure to pay his fees, because the master was not a party to the underlying action, he was not entitled to attorney fees. Inland Group of Cos. v. Obendorff, 131 Idaho 473, 959 P.2d 454 (1998).

Where the appellate court vacated a judgment based on a directed verdict and remanded the case for a new trial, the plaintiff was not entitled to an award of attorney fees on appeal. J.R. Simplot Co. v. Enviro-Clear Co., 132 Idaho 251, 970 P.2d 980 (1998).

Under Idaho R. Civ. P. 54(d)(1)(B), there are three principal factors the trial court must consider when determining which party, if any, prevailed: (1) the final judgment or result obtained in relation to the relief sought; (2) whether there were multiple claims or issues between the parties; and (3) the extent to which each of the parties prevailed on each of the claims or issues. Sanders v. Lankford, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000).

The determination of a reasonable fee under this statute turns solely upon a determination of the prevailing party and should not be colored by characterizing the award as a penalty. Sanders v. Lankford, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000).

Because the court upheld the district court's decision, defendant was not the prevailing party in the proceeding and was not entitled to attorney fees under subsection (3) of this section. City of Kellogg v. Mission Mt. Interests Ltd., 135 Idaho 239, 16 P.3d 915 (2000).

Because the appellate court remanded the case for further proceedings, neither party was the prevailing party and the issue of fees was remanded for consideration at the conclusion of the case. Thomas v. Med. Ctr. Physicians, P.A., 138 Idaho 200, 61 P.3d 557 (2002).

Attorney fees are to be awarded under subsection (3) of this section where the cause of action is for breach of a commercial contract. Where the claim is contractual, fees must be awarded to the prevailing party even though liability under the contract was not established. Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

Attorney fees related to the defense of a teacher's claim for breach of contract were proper where the school district was the prevailing party because it received all relief sought in their answer. Willie v. Bd. of Trs., 138 Idaho 131, 59 P.3d 302 (2002).

Physician's suit against medical center for wrongful termination, and retaliatory discharge involved a dispute relating to an employment relationship, which was inherently contractual in nature; however, because

the appellate court remanded the matter for further proceedings, neither party was the prevailing party and the issue of fees was remanded for consideration at the conclusion of the case. Thomas v. Med. Ctr. Physicians, P.A., 138 Idaho 200, 61 P.3d 557 (2002).

District court did not abuse its discretion in concluding that the witness was the prevailing party and awarding attorney fees on the creditor's complaint where the core issue was the creditor's claim to collect on the alleged guaranty of the promissory note and the witness's counterclaims for fraud and intentional infliction of emotional distress were based upon the creditor's conduct in attempting to collect on the alleged guaranty. Bream v. Benscoter, 139 Idaho 364, 79 P.3d 723 (2003).

Pursuant to the terms of subsection (3) of this section, the refinery was entitled to attorney fees on appeal where it was the prevailing party and a commercial transaction was the underlying case. Sun Valley Potato Growers, Inc. v. Tex. Refinery Corp., 139 Idaho 761, 86 P.3d 475 (2004).

Even if subsection (3) of this section or § 12-121 applied, the former member of a professional limited liability company was not the prevailing party and was not entitled to an award of attorney fees where the appellate court vacated the judgment, and where the member prevailed only in part on the appeal. Howard v. Perry, 141 Idaho 139, 106 P.3d 465 (2005).

Father and his wife attempted to recover attorney's fees in a collection suit brought against their daughter-in-law and their deceased son's estate; however, they were not entitled to attorney's fees as they were not the prevailing party. The daughter-in-law and the estate were not entitled to recover attorney's fees on appeal because the issues raised were not frivolous. Reding v. Reding, 141 Idaho 369, 109 P.3d 1111 (2005).

In a contract dispute, where defendants sought attorney's fees and costs, defendants were prevailing parties under Idaho R. Civ. P. 54(d)(1)(B) because defendants avoided all liability and defendant excavation company was successful on its counterclaim. Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc., 141 Idaho 716, 117 P.3d 130 (2005).

Grant of a JNOV or, in the alternative, a new trial, to the contractor was improper where uncontradicted testimony showed the contractor failed to verify field conditions prior to commencing work. Thus, the subcontractor

was the prevailing party on appeal and was, thus, entitled to attorney's fees pursuant to subsection (3). Gillingham Constr., Inc. v. Newby-Wiggins Constr., Inc., 142 Idaho 15, 121 P.3d 946 (2005).

In a dispute between a telephone company and paging companies arising out of the use of facilities, the award of attorney's fees was not appropriate because the parties had each prevailed on some issues and lost on others. Ryder v. Idaho PUC (In re Ryder), 141 Idaho 918, 120 P.3d 736 (2005).

Because the Idaho supreme court was remanding the case for determination of the client's remaining affirmative defenses, it declined to determine a prevailing party for purposes of a fee award. Sirius LC v. Erickson, 144 Idaho 38, 156 P.3d 539 (2007).

Grant of summary judgment in favor of lessor in his action seeking to recover unpaid rent for the rental of a Bobcat was appropriate because the term "working day" in the lease agreement was unambiguous. Because the lessor was the prevailing party on appeal, it was entitled to an award of reasonable attorney fees. Swanson v. BECO Constr. Co., 145 Idaho 59, 175 P.3d 748 (2007).

Where plaintiffs loaned defendant $20,000, plaintiffs later took over defendant's farm repair business and agreed not to pursue the note if defendant would leave his tools and equipment on the business premises; in plaintiffs' action to collect on the note, defendant was the prevailing party based on the defense of accord and satisfaction. Shore v. Peterson, 146 Idaho 903, 204 P.3d 1114 (2009).

Where a bankruptcy judgment determined that a debt to a creditor was nondischargeable based on the fraud of bankruptcy debtor, but not a co-debtor, and not on other asserted grounds, and that the creditor's claim was completely unsecured and allowed in a substantially reduced amount, no award of attorney fees was warranted; since both the creditor and the debtor prevailed on some issues and failed on others, neither was the prevailing party and, while the co-debtor received nearly all of the relief sought, there was no showing of the fees incurred solely on behalf of the co-debtor. Morrarty v. Morton (In re Morton), 2009 Bankr. LEXIS 3260 (Bankr. D. Idaho Oct. 12, 2009).

In an action for breach of a contract to assemble a specialty car engine, the district court erred by awarding the parties all attorney fees incurred in the litigation. The court had a duty to apportion to each party only the attorney fees related to the claims upon which each party prevailed under subsection (3). Schroeder v. Partin, 151 Idaho 471, 259 P.3d 617 (2011).

Since each claim in an action must be resolved before a court may determine the prevailing party, the identity of the prevailing party cannot be known until proceedings at the trial level are complete. Steel Farms, Inc. v. Croft & Reed, Inc., 154 Idaho 259, 297 P.3d 222 (2012).

District court abused its discretion when it declined to find the employee to be the prevailing party where, although the employee received an award far smaller than that which he sought, he defeated the employer's counterclaim and the award that he did receive was for more than a nominal amount. Oakes v. Boise Heart Clinic Physicians, PLLC, 152 Idaho 540, 272 P.3d 512 (2012).

Absent transcripts of the hearings at which the trial court denied plaintiffs' motion for attorney fees under subsection (3) and denied their motion for reconsideration of the denial order, the record was inadequate for appellate review of plaintiffs' claim that the trial court abused its discretion by ruling that no party prevailed in the multiclaim action in which a verdict was returned only in plaintiffs' favor and only for one of their claims. Poole v. Davis, 153 Idaho 604, 288 P.3d 821 (2012).

— Reversal on Appeal.

Because trial court's award, pursuant to subsection (3) of this section, of discretionary costs and attorney fees to city, which brought suit against other city for breach of contract for wastewater treatment, was based on holding that city was a prevailing party, the award was vacated upon reversing that decision on appeal. City of Chubbuck v. City of Pocatello, 127 Idaho 198, 899 P.2d 411 (1995).

Where district court improperly concluded gravamen of claim was a commercial transaction rather than a claim in tort, reviewing court did not reverse the award of attorney fees where property owner's argument on appeal attacked not the entitlement to the award itself, but the lower court's

finding that purchaser was prevailing party. Jahnke v. Mesa Equip., Inc., 128 Idaho 562, 916 P.2d 1287 (Ct. App. 1996).

The district court did not properly apply the criteria of Idaho R. Civ. P. 54(d)(1)(B) in holding that defendant was not the prevailing party where the "result obtained" was a dismissal of plaintiff's action with prejudice, the most favorable outcome that could possibly be achieved by the defendant. Daisy Mfg. Co. v. Paintball Sports, Inc., 134 Idaho 259, 999 P.2d 914 (Ct. App. 2000).

Where there was a single claim by plaintiff for collection of an account receivable which was dismissed in favor of defendant, application of the Idaho R. Civ. P. 54(d)(1)(B) factors could lead only to a conclusion that defendant was the prevailing party. Sanders v. Lankford, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000).

Where district judge could not apportion those fees that were incurred in using the appellant's breach of fiduciary duty issue as a contract defense from those incurred in using the breach issue as a tort counterclaim, fees were not apportioned between a claim that qualified under the statute and one that did not; therefore, fees were not appropriate. Rockefeller v. Grabow, 136 Idaho 637, 39 P.3d 577 (2001).

District court did not abuse its discretion in concluding that the witness was the prevailing party and awarding attorney fees on the creditor's complaint where the core issue was the creditor's claim to collect on the alleged guaranty of the promissory note and the witness's counterclaims for fraud and intentional infliction of emotional distress were based upon the creditor's conduct in attempting to collect on the alleged guaranty. Bream v. Benscoter, 139 Idaho 364, 79 P.3d 723 (2003).

Promissory Note.

An obligation on a promissory note, like an obligation on an open account, is one of the enumerated causes of action under subsection (2) (now (3)) of this section which need not relate to the purchase or sale of goods in order to invoke an attorney fee award. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

Where the promissory note stated that the holder of the note would be entitled to collect attorneys' fees if suit were brought to collect the note, the

obligees under a deed of trust were entitled to the award of such fees after foreclosure of the deed of trust and trustee's sale. Farber v. Howell, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986).

Generally, a note is an instrument containing an express promise to pay a specified sum of money at a definite time or on demand to a named party, to order or to bearer; no particular form is necessary, provided the writing meets the minimum statutory requirements. Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

Even if a "note" may not contain an express condition, the instrument, under which one party promised to perform specified services and the other party promised to pay for those services, was a "note" where the instrument did not expressly excuse the payor's promise if the performer failed to perform, and the payor did not expressly promise to pay only "if" the performer performed bringing the suit for recovery on the note within this section. Spidell v. Jenkins, 111 Idaho 857, 727 P.2d 1285 (Ct. App. 1986).

This section applies to an action on a promissory note and credit union, as the successful party on appeal, was entitled to an award of attorney fees as a result thereof. Pocatello R.R. Employees Fed. Credit Union v. Galloway, 117 Idaho 739, 791 P.2d 1318 (Ct. App. 1990).

Although plaintiff raised a genuine question of law and attorney fees were not awarded under § 12-121 because plaintiff brought an action on a promissory note, this section was deemed to be applicable and attorney fees were awarded hereunder. Thomson v. Sunny Ridge Village Partnership, 118 Idaho 330, 796 P.2d 539 (Ct. App. 1990).

Pro Se Litigants.

A rule of law proclaiming that pro se lawyer litigants are not entitled to attorney fee awards should be applied consistently; it should not turn on distinctions among proprietorships, partnerships, corporations or other modes of law practice. Swanson & Setzke v. Henning, 116 Idaho 199, 774 P.2d 909 (Ct. App. 1989).

Attorney fees may not be awarded to parties who appear pro se in civil litigation, and this general rule applies to litigators who appear pro se. Swanson & Setzke v. Henning, 116 Idaho 199, 774 P.2d 909 (Ct. App. 1989).

Pro se litigants may not recover attorney fees. Erickson v. Flynn, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002).

Proper Procedure.

Although the language of subsection (1) of this section seems to conflict with § 5-335 and Idaho R. Civ. P. 9(g), these statutes and rule should be reconciled, if possible, so that the provisions of each will not be nullified. Rule 9(g) and § 5-335 suggest a way to do this. According to the rule, "no dollar amount or figure shall be included in the complaint beyond a statement reciting that the jurisdictional amount established for filing the action is satisfied"; a similar general pleading should suffice to support a claim for attorney fees under subsection (1) of this section. For example, the complaint could contain an appropriate general allegation that the plaintiff's claim is within the jurisdictional limits of the district court, or magistrate's division thereof. The complaint could separately allege that "plaintiff's claim for damages does not exceed the limit set by subsection (1) of this section and plaintiff is entitled to an award of attorney fees under this statute." Such allegations would satisfy the jurisdictional pleading requirement and also afford a plaintiff — or defendant — an opportunity to recover attorney fees under subsection (1) of this section without contravening § 5-335 or Idaho R. Civ. P. 9(g). Czerwinsky v. Lieske, 122 Idaho 96, 831 P.2d 564 (Ct. App. 1992).

Purchase or Sale of Goods, Wares or Merchandise.

Subsection (2) (now (3)) of this section was applicable to action by supplier against homeowner for unpaid balance on materials. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

The words "relating to the purchase or sale of goods, wares, merchandise" in subsection (2) (now (3)) of this section plainly modify only the words "or contract" which immediately precede that phrase and which are separated from the remainder of the sentence by a comma not otherwise required by modern English usage; consequently, the phrase does not modify the other types of action identified by the statute — actions on open account, account stated, note, bill or negotiable instrument. Boise Truck & Equip., Inc. v. Hafer Logging, Inc., 107 Idaho 824, 693 P.2d 470 (Ct. App. 1984).

Because this was a suit on a contract for the alleged sale of goods, the defendant is entitled to an award of attorney fees on appeal as the prevailing party, even though no liability under a contract was established. Konic Int'l Corp. v. Spokane Computer Servs., Inc., 109 Idaho 527, 708 P.2d 932 (Ct. App. 1985).

Quashing of Lis Pendens.

A party who loses on all substantive issues in a case cannot be said to prevail, even in part, because a lis pendens recorded with regard to their property, has been quashed. Jerry J. Joseph C.L.U. Ins. Assocs. v. Vaught, 117 Idaho 555, 789 P.2d 1146 (Ct. App. 1990).

Real Estate Contract.

In a case involving a dispute over a real estate sale, a prospective seller was not entitled to fees under subsection (3) because those provisions do not apply to real estate contracts. Cristo Viene Pentecostal Church v. Paz, 144 Idaho 304, 160 P.3d 743 (2007).

Reasonableness.

A court is permitted to examine the reasonableness of the time and labor expended by the attorney and need not blindly accept the figures advanced by the attorney; such figures may be measured against a standard of reasonableness. An attorney cannot spend his time extravagantly and expect to be compensated by the party who loses at trial; thus, in an action to recover less than $2,000, where the claim for attorney fees amounted to $9,000, the district court did not err in allowing only $3,000. Craft Wall of Idaho, Inc. v. Stonebraker, 108 Idaho 704, 701 P.2d 324 (Ct. App. 1985).

An award of attorney fees in the lower court, based on a contingency agreement, may be enough to subsume any amount that might be awarded for attorney fees on appeal; ultimately, the determination of reasonableness will rest with the trial court after it has recalculated the interest award and reconsidered all the factors under Idaho R. Civ. P. 54(e)(3). Hoopes v. Hoopes, 124 Idaho 518, 861 P.2d 88 (Ct. App. 1993).

What constitutes a "reasonable" fee is a discretionary determination for the trial court, to be guided by the criteria of Idaho R. Civ. P. 54(e)(3), and a court may disallow fees that were unnecessarily and unreasonably incurred

or that were the product of attorney churning. Daisy Mfg. Co. v. Paintball Sports, Inc., 134 Idaho 259, 999 P.2d 914 (Ct. App. 2000).

What constitutes a reasonable fee is a discretionary determination for the trial court, to be guided by the criteria of Idaho R. Civ. P. 54(e)(3). Sanders v. Lankford, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000).

The reasonableness of an attorney fee award is based on the trial court's consideration of the factors in Idaho R. Civ. P. 54(e)(3). The court need not specifically address all of the factors contained in that rule in writing, so long as the record clearly indicates that the court considered them all. Thomas v. Thomas, 150 Idaho 636, 249 P.3d 829 (2011).

Retroactive Effect of Amendment.

The 1986 amendment to this section, which enlarged the scope of entitlement to mandatory attorney fee awards, is more accurately classified as substantive than as merely remedial or procedural; consequently, the 1986 amendment should not be given retroactive effect. Myers v. Vermaas, 114 Idaho 85, 753 P.2d 296 (Ct. App. 1988).

State Agency.

Section 12-117(1) is not the exclusive basis upon which to seek an award of attorney fees against a state agency or political subdivision, as attorney fees may be awarded under any other statute that expressly applies to a state agency or political subdivision, such as § 12-121 or this section. Syringa Networks, LLC v. Idaho Dep't of Admin., 155 Idaho 55, 305 P.3d 499 (2013).

Summary Judgment.

Where summary judgment against the plaintiff was vacated, and the issue of improper termination of a limited partnership remanded, the lower court's award of attorney fees to the defendant was no longer justified. Bushi v. Sage Health Care, PLLC, 146 Idaho 764, 203 P.3d 694 (2009).

Wage Claim.

Sections 45-615 and 45-617 are the exclusive code sections under which an employee can recover attorney fees whenever the underlying cause of action is a wage claim pursuant to § 45-617(4), and an employee's claim for

attorney fees under this section in such a case was properly denied. Bilow v. Preco, Inc., 132 Idaho 23, 966 P.2d 23 (1998).

Section 45-612(2) is the exclusive remedy for attorney fees available to an employer when an employee has brought a claim for wages, and this section is not an appropriate source for awarding attorney fees in wage claim disputes. Polk v. Robert D. Larrabee Family Home Ctr., 135 Idaho 303, 17 P.3d 247 (2000).

Cited Smith v. Great Basin Grain Co., 98 Idaho 266, 561 P.2d 1299 (1977); Paloukos v. Intermountain Chevrolet Co., 99 Idaho 740, 588 P.2d 939 (1978); McKee Bros. v. Mesa Equip., Inc., 102 Idaho 202, 628 P.2d 1036 (1981); Idaho Power Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 744, 639 P.2d 442 (1981); Decker v. Homeguard Sys., 105 Idaho 158, 666 P.2d 1169 (Ct. App. 1983); Robinson v. Joint School Dist. No. 331, 105 Idaho 487, 670 P.2d 894 (1983); Wing v. Hulet, 106 Idaho 912, 684 P.2d 314 (Ct. App. 1984); Hartwell Corp. v. Smith, 107 Idaho 134, 686 P.2d 79 (Ct. App. 1984); Argonaut Ins. Cos. v. Tri-West Constr. Co., 107 Idaho 643, 691 P.2d 1258 (Ct. App. 1984); Robison v. State, Dep't of Health & Welfare, 107 Idaho 1055, 695 P.2d 440 (Ct. App. 1985); Kulczyk v. Kehle, 108 Idaho 640, 701 P.2d 260 (Ct. App. 1985); Lawrance v. Elmore Bean Whse., Inc., 108 Idaho 892, 702 P.2d 930 (Ct. App. 1985); Western Seeds, Inc. v. Bartu, 109 Idaho 70, 704 P.2d 974 (Ct. App. 1985); Gro-Mor, Inc. v. Butts, 109 Idaho 1020, 712 P.2d 721 (Ct. App. 1985); Airstream, Inc. v. CIT Fin. Servs., Inc., 111 Idaho 307, 723 P.2d 851 (1986); Jones v. Whiteley, 112 Idaho 886, 736 P.2d 1340 (Ct. App. 1987); Jahnke v. Moore, 112 Idaho 944, 737 P.2d 465 (Ct. App. 1987); Gem State Homes, Inc. v. Idaho Dep't of Health & Welfare, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); J.M.F. Trucking, Inc. v. Carburetor & Elec. of Lewiston, Inc., 113 Idaho 797, 748 P.2d 381 (1987); Waters v. Double L, Inc., 114 Idaho 256, 755 P.2d 1294 (Ct. App. 1987); Vanoski v. Thomson, 114 Idaho 381, 757 P.2d 244 (Ct. App. 1988); Christensen v. Rice, 114 Idaho 929, 763 P.2d 302 (Ct. App. 1988); Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988); Inland Title Co. v. Comstock, 116 Idaho 701, 779 P.2d 15 (1989); Valley Bank v. Monarch Inv. Co., 118 Idaho 747, 800 P.2d 634 (1990); Callenders, Inc. v. Beckman, 120 Idaho 169, 814 P.2d 429 (Ct. App. 1991); USA Fertilizer, Inc. v. Idaho First Nat'l Bank, 120 Idaho 271,

815 P.2d 469 (Ct. App. 1991); Perkins v. Highland Enters., Inc., 120 Idaho 511, 817 P.2d 177 (1991); Krommenhoek v. A-Mark Precious Metals, Inc., 945 F.2d 309 (9th Cir. 1991); Hoff Companies, Inc. v. Danner, 121 Idaho 39, 822 P.2d 558 (Ct. App. 1991); Cuddy Mt. Concrete, Inc. v. Citadel Constr., Inc., 121 Idaho 220, 824 P.2d 151 (Ct. App. 1992); Phillips Indus., Inc. v. Firkins, 121 Idaho 693, 827 P.2d 706 (Ct. App. 1992); Berning v. Drumwright, 122 Idaho 203, 832 P.2d 1138 (Ct. App. 1992); Farm Credit Bank v. Wissel, 122 Idaho 565, 836 P.2d 511 (1992); Idaho First Nat'l Bank v. LeMaster, 147 Bankr. 52 (Bankr. D. Idaho 1992); State, Dep't of Health & Welfare ex rel. Osborn v. Altman, 122 Idaho 1004, 842 P.2d 683 (1992); Figueroa v. Kit-San Co., 123 Idaho 149, 845 P.2d 567 (Ct. App. 1992); McCandless v. Carpenter, 123 Idaho 386, 848 P.2d 444 (Ct. App. 1993); St. Alphonsus Regional Medical Ctr., Ltd. v. Killeen, 124 Idaho 197, 858 P.2d 736 (1993); Suitts v. First Sec. Bank of Idaho, N.A., 125 Idaho 27, 867 P.2d 260 (Ct. App. 1993); Christensen v. Nelson, 125 Idaho 663, 873 P.2d 917 (Ct. App. 1994); J.R. Simplot Co. v. Chemetics Int'l, Inc., 126 Idaho 532, 887 P.2d 1039 (1994); Graham Capital Corp. v. Simpson, 126 Idaho 749, 890 P.2d 335 (1995); Bell Rapids Mut. Irrigation Co. v. Hausner, 126 Idaho 752, 890 P.2d 338 (1995); Pocatello Auto Color, Inc. v. Akzo Coatings, Inc., 127 Idaho 41, 896 P.2d 949 (1995); Haley v. Clinton, 128 Idaho 123, 910 P.2d 795 (Ct. App. 1996); Nationsbanc Mtg. Corp. v. Cazier, 127 Idaho 879, 908 P.2d 572 (Ct. App. 1995), cert. denied, 519 U.S. 864, 117 S. Ct. 172, 136 L. Ed. 2d 113 (1996); Pocatello R.R. Fed. Credit Union v. Dairyland Ins. Co., 129 Idaho 444, 926 P.2d 628 (1996); Star Phoenix Mining Co. v. Hecla Mining Co., 130 Idaho 223, 939 P.2d 542 (1997); Walker v. American Cyanamid Co., 130 Idaho 824, 948 P.2d 1123 (1997); Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998); Smith v. Smith, 131 Idaho 800, 964 P.2d 667 (Ct. App. 1998); Hummer v. Evans, 132 Idaho 830, 979 P.2d 1188 (1999); Magic Valley Truck Brokers, Inc. v. Meyer, 133 Idaho 110, 982 P.2d 945 (Ct. App. 1999); Ramerth v. Hart, 133 Idaho 194, 983 P.2d 848 (1999); Corder v. Idaho Farmway, Inc., 133 Idaho 353, 986 P.2d 1019 (Ct. App. 1999); Klaue v. Hern, 133 Idaho 437, 988 P.2d 211 (1999); U.S. Bank Nat'l Ass'n v. Kuenzli, 134 Idaho 222, 999 P.2d 877 (2000); Dennett v. Kuenzli, 134 Idaho 229, 999 P.2d 884 (2000); Weaver v. Stafford, 134 Idaho 691, 8 P.3d 1234 (2000); Treasure Valley Gastroenterology Specialists, P.A. v. Woods, 135 Idaho 485, 20 P.3d 21 (Ct. App. 2001); Post v. Idaho Farmway, Inc., 135 Idaho 475, 20 P.3d 11 (2001);

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ALR. — Right of attorney for holder of property insurance to fee out of insurer's share of recovery from tortfeasor. 2 A.L.R.3d 1441.

Prevailing union member's right to recover attorneys' fees in action against union or union officers. 9 A.L.R.3d 1045.

Necessity and sufficiency of notice and hearing as to allowance of suit money or counsel fees in divorce or other marital action. 10 A.L.R.3d 280.

Personal liability of executor or administrator for fees of attorney employed by him for the benefit of the estate. 13 A.L.R.3d 518.

Attorneys' fees or other expenses of litigation as element in measuring exemplary or punitive damages. 30 A.L.R.3d 1443.

Wife's right to award of counsel fees in final divorce judgment of trial or appellate court as affected by the fact that judgment was rendered against her. 32 A.L.R.3d 1227.

Allowance of attorneys' fees in shippers' action against carrier for loss of, or damage to, interstate shipment. 37 A.L.R.3d 1125.

Attorneys' fees in class actions. 38 A.L.R.3d 1384.

Validity and construction of statute or rule allowing attorneys' fees to out-of-state defendant successfully defending suit brought in state. 51 A.L.R.3d 1336.

Amount of compensation of attorney for service in insurance matters in absence of contract or statute fixing amount. 56 A.L.R.3d 187.

Amount of attorney's compensation in absence of contract or statute fixing amount. 57 A.L.R.3d 475.

Amount of attorney's compensation in matters involving guardianship and trusts. 57 A.L.R.3d 550.

Amount of attorneys' fees in tort action. 57 A.L.R.3d 584.

Excessiveness or inadequacy of attorney's fees in matters involving commercial and general business activities. 23 A.L.R.5th 241.

Amount of attorneys' compensation in proceedings involving wills and administration of decedents' estates. 58 A.L.R.3d 317.

Amount of attorneys' compensation in matters involving real estate. 58 A.L.R.3d 1336.

Dismissal of plaintiff's action as entitling defendant to recover attorney's fees or costs as "prevailing party" or "successful party". 66 A.L.R.3d 1087.

Who is the "successful party" or "prevailing party" for purposes of awarding costs where both parties prevail on affirmative claims. 66 A.L.R.3d 1115.

Validity of statute allowing attorneys' fees to successful claimant but not to defendant, or vice-versa. 73 A.L.R.3d 515.

Right of party who is attorney and appears for himself to award of attorney's fees against opposing party as element of costs. 78 A.L.R.3d 1119.

Insured's right to recover attorneys' fees incurred in declaratory judgment action to determine existence of coverage under liability policy. 87 A.L.R.3d 429.

Taxpayer's action, allowance of counsel fees in. 89 A.L.R.3d 690.

Excessiveness or adequacy of attorneys' fees in domestic relations cases. 17 A.L.R.5th 366.

Application and construction of state offer of judgment rule — Determining whether offeror is entitled to award. 2 A.L.R.6th 279.

Amount of attorneys' fees under Federal Tort Claims Act, 86 A.L.R. Fed. 866.

§ 12-121. Attorney's fees. — In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. This section shall not alter, repeal or amend any statute that otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

History.

I.C., 12-121, as added by 1976, ch. 349, § 1, p. 1158; am. 1987, ch. 263, § 2, p. 555; am. 2017, ch. 47, § 2, p. 75.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 47, substituted "parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. This section shall not alter, repeal or amend any statute that" for "parties, provided that this section shall not alter, repeal or amend any statute which" in the former first sentence.

Legislative Intent.

Section 1 of S.L. 2017, ch. 47 provided: "Legislative Intent. It is the intent of the Legislature, by enactment of this legislation, to reinstate and make no change to Idaho law on attorney's fees as it existed before the Idaho Supreme Court's decision in *Hoffer v. Shappard*, 2016 Opinion No. 105 [160 Idaho 870, 380 P.3d 681], September 28, 2016. To accomplish that goal, it is the Legislature's intent that this legislation be construed in harmony with Idaho Supreme Court decisions on attorney's fees that were issued before *Hoffer v. Shappard*."

Effective Dates.

Section 4 of S.L. 2017 declared an emergency. Approved March 1, 2017.

CASE NOTES

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Applicability of Idaho R. Civ. P. 54(e)(1).

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— Award not proper.

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Remand.

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Untimely appeal.

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Waiver.

Worker's compensation.

Yielding to § 6-918A.

Zoning matters.

Actions on Contracts.

Even if a county's contract with a construction company is not absolutely void as between the parties to it, the lowest responsible bidder may nevertheless be entitled to injunctive relief against the company's continued performance without a public works contractor's license, and the lowest responsible bidder should be awarded reasonable attorney's fees for the original proceedings in the trial court and on appeal. McKay Constr. Co. v. Ada County Bd. of County Comm'rs, 99 Idaho 235, 580 P.2d 412 (1978).

Although the vendors' action for money damages and judicial sale may not have been the specific form of action contemplated by this provision for attorney's fees, when this provision is read together with the other contractual provisions on remedies, which provide that the forfeiture remedy is not exclusive but cumulative to other remedies, it becomes apparent that the parties intended that the vendors be entitled to an award of attorney's fees in the event judicial action was necessary to enforce the terms of the real estate contract. Christensen v. Christensen, 100 Idaho 733, 605 P.2d 80 (1979).

The more restrictive criteria set forth in Idaho R. Civ. P. 54(e)(1), for determining entitlement to an award of attorney's fees under this section, are not applicable where claim for attorney's fees is based upon a contract. Bank of Idaho v. Colley, 103 Idaho 320, 647 P.2d 776 (Ct. App. 1982).

In an insurance coverage case, in which the insurer sought a judicial declaration that under a homeowner's insurance policy it was neither obligated to defend the insured nor to cover claims against him arising from injuries sustained by the insured's son in a swimming pool accident and in which the insurer ultimately prevailed, the court determined that there was a clear enough question of the insurance policy's proper interpretation such

that the award of attorney's fees should be denied. Mutual of Enumclaw Ins. Co. v. Roberts, 128 Idaho 232, 912 P.2d 119 (1996).

Defendant, initially awarded default judgment in his breach of contract counterclaim and prevailing on plaintiff's appeal to set aside judgment on Idaho R. Civ. P. 60(b) grounds, was awarded costs and attorney's fees. In an action on a contract, § 12-120(3) generally mandates an award of attorney's fees to the prevailing party on appeal as well as at trial. Tyler v. Keeney, 128 Idaho 524, 915 P.2d 1382 (Ct. App. 1996).

Where real estate contract between the parties provided for an award of attorney's fees to the prevailing party and the vendors fully prevailed on issues raised in the appeal by the buyers, vendors were awarded costs and reasonable attorney's fees; yet because vendors did not prevail on their cross-appeal, buyers were entitled to costs and attorney's fees under § 12-120(3) for the defense of the cross-appeal; cost bills to be submitted by vendors and buyers were required to separately show the amounts incurred for prosecuting the appeal and cross-appeal and defending against the cross-appeal respectively. Toews v. Funk, 129 Idaho 316, 924 P.2d 217 (Ct. App. 1994).

In an action arising from a breach of a contract to design and construct a cabin, a wholesale supplier who prevailed on summary judgment was properly awarded costs and attorney's fees pursuant to this section. Nelson v. Anderson Lumber Co., 140 Idaho 702, 99 P.3d 1092 (Ct. App. 2004).

Actions on Mechanic's Liens.

Prior to the enactment of this section in 1976, there was no statute which authorized the award of attorney's fees on appeal in mechanic's lien foreclosure actions. Therefore, since there was no other "statute which otherwise provides for the award of attorney's fees" in mechanic's lien foreclosure actions, this section authorized the supreme court to award reasonable attorney's fees to the prevailing party. Acoustic Specialties, Inc. v. Wright, 103 Idaho 595, 651 P.2d 529 (1982).

Where the narrow focus of appeal by landlord from judgment imposing materialman's lien was upon the application of settled law to undisputed facts and the landlord made no substantial showing that the district court misapplied the law, the court concluded that the appeal was brought and

pursued without foundation and attorney's fees would be awarded to the contractor in an amount to be determined as provided by Idaho App. R. 41(d). Christensen v. Idaho Land Developers, Inc., 104 Idaho 458, 660 P.2d 70 (Ct. App. 1983).

This section is the only statute which authorizes an award of attorney's fees, on appeal, in actions to foreclose liens for labor and materials. Such an award will be made if the appeal has been brought, pursued or defended frivolously, unreasonably or without foundation. Christensen v. Idaho Land Developers, Inc., 104 Idaho 458, 660 P.2d 70 (Ct. App. 1983).

Although attorney's fees on appeal by materialman's lien claimants are not available pursuant to § 45-513, an award could be made under this section if the appeal was brought frivolously, unreasonably or without foundation. Franklin Bldg. Supply Co. v. Sumpter, 139 Idaho 846, 87 P.3d 955 (2004).

Because § 45-513 is a specific statute providing for the award of attorney fees in proceedings to foreclose a mechanic's lien, §§ 12-120(3) and 12-121, which are general statutes, do not apply. First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc, 154 Idaho 626, 301 P.3d 632 (2012).

Administrative Appeal.

Attorney's fees under this section are not available to parties in an appeal from an agency decision since the process of such an appeal is not begun by a complaint filed in a court action, as required by this section. Knight v. Department of Ins., 119 Idaho 591, 808 P.2d 1336 (Ct. App. 1991).

Court refused to grant an association attorney's fees because such were not recoverable under this section related to an appeal from an agency decision, and the landowner presented legitimate issues for consideration on appeal. Brett v. Eleventh St. Dockowner's Ass'n, 141 Idaho 517, 112 P.3d 805 (2005).

Idaho industrial commission did not err by failing to award attorney's fees to a former client in a legal fee dispute with an attorney because the claim was one of first impression; moreover, there was no basis for awarding attorney's fees on appeal under this section. Cheung v. Pena, 143 Idaho 30, 137 P.3d 417 (2006).

After Refusing Offer of Judgment.

Where plaintiff filed an assault and battery suit seeking general damages of $200,000, punitive damages of $50,000 and special damages of $1,000, and defendant prior to trial made an offer of judgment of $1,700 which was refused, after which the jury found in plaintiff's favor, but awarded him only nominal damages of $1.00, it was proper for the trial court to award the defendant costs exceeding $800 and attorney's fees exceeding $5,800 pursuant to this section, since Idaho R. Civ. P. 68 clearly entitles a party tendering offer of judgment to those costs accrued following an offer of judgment where the damages awarded are less than the offer of judgment where the trial court found pursuant to subsection (B) of Idaho R. Civ. P. 54(d)(1) that the defendant was the prevailing party. Odziemek v. Wesely, 102 Idaho 582, 634 P.2d 623 (1981).

Against County or Municipality.

Attorney's fees may, in a proper case be asserted against a county or municipality, and an attorney fee award made pursuant to this section may properly be included as costs. Averitt v. City of Coeur d'Alene, 100 Idaho 751, 605 P.2d 515 (1980).

Against Department of Correction.

Where inmate's petition alleged violations of due process at the correctional facility operated by the department of correction, it would have been error for the district court to have awarded fees and costs against the department under § 12-117 since the award could have been made only under this section. Needs v. Idaho State Dep't of Cor., 115 Idaho 399, 766 P.2d 1280 (Ct. App. 1988).

Against State Licensing Board.

Where apprentice barber successfully brought suit against the state board of barber examiners and won the right to be reexamined without additional schooling after he had failed the practical portion of the barber examination due to severe chest pains, it was within the trial court's discretion to award costs pursuant to § 12-101 and attorney's fees pursuant to this section. Rickel v. Board of Barber Exmrs., 102 Idaho 260, 629 P.2d 656 (1981).

Alternative Theory as Basis for Award.

Although plaintiff raised a genuine question of law and attorney's fees were not awarded under this section, because plaintiff brought an action on

a promissory note, § 12-120 was deemed to be applicable and attorney's fees were awarded under that section. Thomson v. Sunny Ridge Village Partnership, 118 Idaho 330, 796 P.2d 539 (Ct. App. 1990).

Appeal of Award.

Separate certification of finality was not required for the order awarding attorney's fees to be appealable when entered. Wilsey v. Fielding, 115 Idaho 437, 767 P.2d 280 (Ct. App. 1989).

An award of attorney's fees at trial under Idaho R. Civ. P. 54(e) and this section is subject to reversal only upon a showing that the district court abused its discretion; where the district court found that the defendants unreasonably defended and pursued frivolous claims against plaintiff, the court of appeals held that there was no abuse of discretion in awarding attorney's fees to plaintiff. United States Nat'l Bank v. Cox, 126 Idaho 733, 889 P.2d 1123 (Ct. App. 1995).

Where magistrate summarily dismissed defendant's petition for habeas corpus relief and where, on appeal, the district court did not remand to the magistrate for an evidentiary hearing, the full nature and extent of the state's defense to defendant's petition was unknown, and based on the current record it was not possible to determine if the state's actions met the criteria necessary under this section and Idaho App. R. 41 for an award of attorney's fees to defendant, as such, the district court did not abuse its discretion in denying defendant his attorney's fees in the intermediate appeal. Rendon v. Paskett, 126 Idaho 944, 894 P.2d 775 (Ct. App. 1995).

Appeal Without Foundation.

Section 45-513 provides no basis for a successful lien claimant to receive attorney's fees on appeal. However, that does not insulate lien foreclosure cases from discretionary awards of attorney's fees on appeal under this section. Therefore, where the appellate court has left with the abiding belief that an appeal was brought without foundation, it appropriately awarded attorney's fees on appeal to the appellee. W.F. Constr. Co. v. Kalik, 103 Idaho 713, 652 P.2d 661 (Ct. App. 1982).

Attorney's fees would not be awarded on appeal of tort claim case where appeal was free of bad faith and judgment from which both sides appealed

was upheld in its entirety. Packard v. Joint Sch. Dist. No. 171, 104 Idaho 604, 661 P.2d 770 (Ct. App. 1983).

In appeal where appellant did not show any findings of facts that were supported by the evidence and appellate court was not asked to establish any new legal standards, nor to modify or clarify any existing legal standards but the focus of the appeal was the application of settled law to facts, attorney's fees were awarded to appellee. Scott v. Castle, 104 Idaho 719, 662 P.2d 1163 (Ct. App. 1983).

An award of attorney's fees on appeal is appropriate when the appeal is brought or defended frivolously, unreasonably, or without foundation. Gatchel v. Butler, 104 Idaho 876, 664 P.2d 783 (Ct. App. 1983).

Where appellants challenging order reducing attorney's fees for administratrix of estate did not point to any findings of fact which were clearly, or even arguably, unsupported by substantial and competent evidence, presented no significant issue on a question of law, did not request that the court establish any new legal standards nor that the court modify or clarify any existing standards, and where the narrow focus of the appeal was the application of settled law to the facts and there was no showing that the magistrate misapplied the law, the appeal from the district court was brought unreasonably and without foundation; hence, attorney's fees on appeal were awarded to the respondent heirs in an amount to be determined as provided in Idaho App. R. 41(d). Gatchel v. Butler, 104 Idaho 876, 664 P.2d 783 (Ct. App. 1983).

The rule that, in normal circumstances, attorney's fees will only be awarded when the court is left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation is applicable to probate proceedings. Eliasen v. Fitzgerald, 105 Idaho 234, 668 P.2d 110 (1983).

How the trial court exercised his discretion below is not controlling on supreme court's determination of whether or not appeal was brought frivolously, unreasonably, and without foundation. Everett v. Trunnell, 105 Idaho 787, 673 P.2d 387 (1983).

Where parents of man killed in accident brought separate action asserting that they were heirs within the meaning of the Idaho wrongful death statute

when clearly they were not, and when they knew that a prior action had been brought by the wife and minor child who, under Idaho law, were clearly the proper persons to bring that action, such case was a proper case for the award of attorney's fees on appeal. Everett v. Trunnell, 105 Idaho 787, 673 P.2d 387 (1983).

Although the defendant's arguments to the supreme court superficially read reasonably, its contentions in fact were unreasonably grounded; therefore, the district court correctly awarded attorney's fees to the plaintiff. O'Boskey v. First Fed. Sav. & Loan Ass'n, 112 Idaho 1002, 739 P.2d 301 (1987).

A taxpayer whose appeal from a decision awarding county payment of delinquent personal property taxes raised frivolous and nonfrivolous issues was liable for attorney's fees only as to issues raised frivolously, unreasonably or without foundation. Childers v. Wolters, 115 Idaho 527, 768 P.2d 790 (Ct. App. 1988).

Where appellant failed on appeal to present any significant issue regarding a question of law, where no findings of fact made by the district court were clearly or arguably unsupported by substantial evidence, where the court was not asked to establish any new legal standards or modify existing ones, and where the focus of the case was the application of settled law to the facts, the appeal was deemed to be unreasonable and without foundation and attorney's fees were awarded the appellee. Excel Leasing Co. v. Christensen, 115 Idaho 708, 769 P.2d 585 (Ct. App. 1989).

After plaintiff's attorneys had lost on their lien claim for fees and costs in one county, the appropriate remedy would have been to perfect an appeal in that proceeding, and subjecting the defendants to further litigation in another county on the same issue was unreasonable; the court also decided that, once the res judicata defense became blatantly apparent, further litigation became frivolous and an award of fees was properly made under Idaho R. Civ. P. 54(e)(1) to defendants. Cole v. Kunzler, 115 Idaho 552, 768 P.2d 815 (Ct. App. 1989).

An award under this section will be made if the appellate court finds that an appeal was brought or pursued unreasonably or without foundation; namely, when an appeal turns on the application of settled law to undisputed facts, and the appellant has made no substantial showing that the

lower court misapplied the law. Wolske Bros. v. Hudspeth Sawmill Co., 116 Idaho 714, 779 P.2d 28 (Ct. App. 1989).

In an appeal by the defendant in a paternity suit where the state did not contend that the defendant was involved in any litigative misconduct, but it simply argued the defendant's appeal was meritless, the state was awarded attorney's fees under this section rather than under Idaho R. Civ. P. 11(a)(1). State of Alaska ex rel. Sweat v. Hansen, 116 Idaho 927, 782 P.2d 50 (Ct. App. 1989).

Where the appellant fails to present any significant issue on appeal regarding a question of law, where no findings of fact made by the trial court are clearly or arguably unsupported by substantial evidence, where the appellate court is not asked to establish any new legal standards or modify existing ones, and where the focus of the case is on the application of settled law to the facts, the appeal is deemed to be without foundation. Troche v. Gier, 118 Idaho 740, 800 P.2d 136 (Ct. App. 1990).

Where buyer of property challenged only the court's factual findings, involving unjust enrichment and subrogation, upon which there was disputed evidence, and buyer made no convincing showing that the court misapplied the law, seller was entitled to an award of attorney's fees on appeal. Cozzetto v. Wisman, 120 Idaho 721, 819 P.2d 575 (Ct. App. 1991).

Where the only serious question presented was whether the term "judicial proceeding" encompassed the letters written two weeks after the taking of a default judgment in which the attorney informed the trial court of a possible fraud and requested that the court inquire into the matter, in light of the case law and the clearly enunciated policy behind the rule granting immunity for such communications, the appeal was unreasonable and without adequate legal foundation. Therefore, attorney's fees were proper for the respondents on appeal. Malmin v. Engler, 124 Idaho 733, 864 P.2d 179 (Ct. App. 1993).

Where appellee asked the court of appeals to award attorney's fees on appeal under this section and Idaho R. Civ. P. 54(e) due to her claim that the appeal was brought "frivolously, unreasonably, and without foundation," the court of appeals noted that, under Idaho App. R. 11.1, it could award fees against a party or the party's attorney involved in the appeal of its own motion and held that by failing to appeal an Idaho R. Civ. P. 9(b) dismissal, the appellant could not have prevailed under any circumstances and

awarded costs and attorney's fees against appellant's counsel, as it was the responsibility of the attorney, not the client, to recognize the legal basis upon which an order was granted and to properly evaluate whether or not good faith grounds existed for an appeal. MacLeod v. Reed, 126 Idaho 669, 889 P.2d 103 (Ct. App. 1995).

In action to quiet title, plaintiffs were entitled to attorney's fees accrued on appeal of magistrate's decision to district court where such appeal was unreasonable in that the defendants sought to have the district court reinterpret conflicting evidence. Shettel v. Bamesberger, 130 Idaho 217, 938 P.2d 1255 (Ct. App. 1997).

Where plaintiff failed to provide argument or authority in support of the only issues on appeal that were properly before the court, the appeal was brought and pursued frivolously, unreasonably, and without foundation; thus, defendants were entitled to attorney's fees and costs on appeal pursuant to this section, Idaho R. Civ. P. 54(e)(1), and Idaho App. R. 41. Anson v. Les Bois Race Track, Inc., 130 Idaho 303, 939 P.2d 1382 (1997).

Where defendant's appeal merely invited the appellate court to second-guess the trial court on conflicting evidence, the plaintiff was entitled to an award of reasonable attorney's fees. DeChambeau v. Estate of Smith, 132 Idaho 568, 976 P.2d 922 (1999); Crowley v. Critchfield, 145 Idaho 509, 181 P.3d 435 (2007).

Attorney's fees were properly awarded to the insurer on the grounds that the owner's case was without foundation. Graham v. State Farm Mut. Auto. Ins. Co., 138 Idaho 611, 67 P.3d 90 (2003).

Appellate court awarded attorney's fees to a cow owner, a pasture owner, and the state in a personal injury action brought by injured parties who struck a cow on a highway, as the injured parties' arguments on appeal totally lacked foundation. Karlson v. Harris, 140 Idaho 561, 97 P.3d 428 (2004).

Because appellant provided absolutely no argument or authority that would even remotely support his assertion that he had standing to appeal, and all he did was increase the cost to the parties, the district court did not abuse its discretion in awarding the parents attorney fees on the ground that

appellant brought the appeal unreasonably and without foundation. Abolafia v. Reeves, 152 Idaho 898, 277 P.3d 345 (2012).

— Well Settled Questions of Law.

Where an appeal turns on questions of law, attorney's fees will be awarded under this section if the law is well settled and the appellant has made no substantial showing that the district court misapplied the law. Andrews v. Idaho Forest Indus., Inc., 117 Idaho 195, 786 P.2d 586 (Ct. App. 1990).

Where an appellant's argument hinges on a question of law, attorney's fees will be awarded under this section, if the question of law is clearly settled and the appellant makes no substantial showing that the district court misapplied the law. Hutchinson v. State, 134 Idaho 18, 995 P.2d 363 (Ct. App. 1999).

Appeals in Divorce Cases.

Where an appeal in a divorce a case is brought frivolously and without foundation, an appellate court may award fees under this section. In such case, the amount awarded is fixed by reference to Idaho R. Civ. P. 54(e)(3) which enables the judge to consider the factors listed in § 32-705 and incorporated by reference into § 32-704(2). In this way, this section plays a role in divorce cases without unduly encroaching upon the financial assistance scheme contemplated by § 32-704(2). Hentges v. Hentges, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Where husband, appealing property division pursuant to divorce proceeding, attempted to reargue facts that he was unable to establish at trial, attempted to introduce new facts and evidence that were not in the record below, and made no cogent legal arguments or request for a repeal or modification of existing law, an award of attorney's fees under this section and Idaho R. Civ. P. 54(e)(1) was appropriate. Huerta v. Huerta, 127 Idaho 77, 896 P.2d 985 (Ct. App. 1995).

Where record did not indicate that either party in modification proceeding brought, pursued, or responded unreasonably or frivolously to appeal, an award of attorney's fees to either party would have been inappropriate in case. Jensen v. Jensen, 128 Idaho 600, 917 P.2d 757 (1996).

Because ex-husband, seeking attorney's fees in appeal, which affirmed judgment denying ex-wife past spousal support payments, failed to include any argument to support the claim to attorney's fees, his request was summarily denied. Toyama v. Toyama, 129 Idaho 142, 922 P.2d 1068 (1996).

Where former husband presented no argument or authority to show that the magistrate abused its discretion in dividing and valuing retirement benefits under the reserved jurisdiction method by utilizing established time rule instead of the accrued benefits method the district court properly awarded former wife attorney's fees pursuant to the appeal. Moreover, the former wife was entitled to attorney's fees pursuant to former husband's appeal to the supreme court. Hunt v. Hunt, 137 Idaho 18, 43 P.3d 777 (2002).

Considering the almost eight years of litigation and the fact that the father acted as his own attorney repeatedly and brought the instant appeal without factual basis, the appeal was frivolous, unreasonable, and without foundation; as such, an award of attorney fees on appeal to the mother was appropriate. Nelson v. Nelson, 144 Idaho 710, 170 P.3d 375 (2007).

Applicability of § 6-918A.

To the extent of any conflict between this section and § 6-918A, the court applies § 6-918A. It is not only the later statute, but also a more specific statement of the legislature's intent about the award of attorney's fees in tort claims cases. Tomich v. City of Pocatello, 127 Idaho 394, 901 P.2d 501 (1995).

Applicability of Idaho R. Civ. P. 11(a)(1).

Idaho R. Civ. P. 11(a)(1) does not exist to duplicate this section, which has long been construed to authorize an attorney fee award in any civil case brought frivolously, unreasonably, or without foundation. Rather, the rule serves a separate, cognizable purpose, focusing upon discrete pleading abuses or other types of litigative misconduct within the overall course of a lawsuit. State of Alaska ex rel. Sweat v. Hansen, 116 Idaho 927, 782 P.2d 50 (Ct. App. 1989).

Idaho R. Civ. P. 11(a)(1) does not duplicate this section, and the circumstances that justify an award of fees under that statute do no

necessarily call for imposition of Rule 11 sanctions. Landvik ex rel. Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997).

Applicability of Idaho R. Civ. P. 54(e)(1).

The application of this section to a claim for relief which arose prior to the enactment of that section, but tried after the section became law, is not an improper retroactive application of that section since it is remedial and procedural and does not affect the substantive claim for relief. Jensen v. Shank, 99 Idaho 565, 585 P.2d 1276 (1978); Buckalew v. City of Grangeville, 100 Idaho 460, 600 P.2d 136 (1979).

This section's general award of attorney's fees is inconsistent with the more specific provision of § 1-2311 in regard to awarding attorney's fees to prevailing parties in an appeal from the small claims department, and this section is, therefore, not applicable to the award of attorney's fees on such appeals. Huff v. Uhl, 103 Idaho 274, 647 P.2d 730 (1982).

Application of this section to a claim for relief which arose prior to the enactment of the section but was tried after the section became law was not an improper retroactive application of the section since the provisions of this section are remedial and procedural and do not affect the substantive claim for relief. Neilsen & Co. v. Cassia & Twin Falls County Joint Class A School Dist. 151, 103 Idaho 317, 647 P.2d 773 (Ct. App. 1982).

Where action was filed prior to effective date of Idaho R. Civ. P. 54(e)(1), but heard after that date, the standards imposed by that rule did not apply and the decision to award attorney's fees rested in the sound discretion of the trial court pursuant to this section. Anderson v. Ethington, 103 Idaho 658, 651 P.2d 923 (1982).

Where the trial judge incorrectly assumed that he was bound by the provisions of Idaho Civil Procedure 54(e)(1) and that he had no discretion to exercise under this section in the matter of the award of attorney's fees, when in fact Idaho R. Civ. P. 54(e)(1) did not become effective until over a year after the case was filed, attorney's fees were denied on improper grounds; therefore, the case should be remanded so that the trial court could decide, in the proper exercise of its discretion, whether to award attorney's fees. Barnes v. Hinton, 103 Idaho 619, 651 P.2d 553 (Ct. App. 1982).

In case filed prior to adoption of Idaho R. Civ. P. 54(e)(1), a trial court could award attorney's fees to the prevailing party in its discretion, without the limitations now stated in the rule. Briscoe v. Nishitani, 105 Idaho 175, 667 P.2d 278 (Ct. App. 1983).

Even if Idaho R. Civ. P. 54(e)(1) was inapplicable to case filed before effective date of rule, it was permissible for the district court to apply the conceptual principles of the rule; but where the court had the alternative of applying the principles of Idaho R. Civ. P. 54(e)(1), or of applying another principle, i.e., the "prevailing party" provision of this section, unfettered by the limitation subsequently imposed on the statute by Idaho R. Civ. P. 54(e)(1) on March 1, 1979, and the court chose the latter and stated reasons for that choice, there was no abuse of discretion in making that decision. Ladd v. Coats, 105 Idaho 250, 668 P.2d 126 (Ct. App. 1983).

In determining whether Idaho R. Civ. P. 54(e)(1) applies in a particular case, the relevant date is the date on which the cause of action was filed; therefore, the standard imposed by Idaho R. Civ. P. 54(e)(1) was not applicable to case filed prior to adoption of rule, even though attorney's fees were awarded after effective date of rule, and the award of attorney's fees under this section was within the discretion of the trial court. Cottonwood Elevator Co. v. Zenner, 105 Idaho 469, 670 P.2d 876 (1983).

Idaho R. Civ. P. 54(e)(1) applies only to actions filed after March 1, 1979; consequently, where action was filed in September, 1975, the trial judge incorrectly determined that he was bound by Idaho R. Civ. P. 54(e)(1) and denied attorney's fees on improper grounds. Jones v. Mountain States Tel. & Tel. Co., 105 Idaho 520, 670 P.2d 1305 (Ct. App. 1983).

The award of attorney's fees under this section and Idaho R. Civ. P. 54(e)(1) at the trial level is a matter within the trial court's discretion. Everett v. Trunnell, 105 Idaho 787, 673 P.2d 387 (1983).

Section 12-120(2) should not be extended by judicial construction to mandate an attorney fee award on appeal where the sole issue is the reasonableness of an amount awarded below, however an award still may be allowed under this section in such a case. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

It was within the discretion of the district court to award attorney's fees under this section without making findings as required by Idaho R. Civ. P. 54(e)(1), where the action was filed prior to the effective date of Idaho R. Civ. P. 54(e)(1). Pickering v. El Jay Equip. Co., 108 Idaho 512, 700 P.2d 134 (Ct. App. 1985).

Idaho R. Civ. P. 54(e)(1) creates no independent right to attorney's fees, but merely establishes a framework for applying this section. Robison v. State, Dep't of Health & Welfare, 107 Idaho 1055, 695 P.2d 440 (Ct. App. 1985).

Where the action was instituted prior to the effective date of Idaho R. Civ. P. 54(e)(1) the district court was not required to find that the case was brought or pursued "frivolously, unreasonably or without foundation," prior to awarding fees under the provisions of this section. Curtis v. City of Ketchum, 111 Idaho 27, 720 P.2d 210 (1986).

Attorney's fees should be awarded under this section only if the position advocated by the nonprevailing party is plainly fallacious and, therefore, not fairly debatable. Associates N.W. v. Beets, 112 Idaho 603, 733 P.2d 824 (Ct. App. 1987).

Where the action was filed before March 1, 1979, the effective date of Idaho R. Civ. P. 54(e)(1), an award of fees under this section was not contingent upon a finding that the action was defended frivolously, unreasonably or without foundation; standing alone this section gave the district court broad discretion to award attorney's fees. R.T. Nahas Co. v. Hulet, 114 Idaho 23, 752 P.2d 625 (Ct. App. 1988).

This section has been supplemented by Idaho R. Civ. P. 54(e)(1) and 54(e)(2). Rule 54(e)(1) provides that attorney's fees under this section may be awarded only when the court finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. Additionally, Rule 54(e)(2) requires the court — whenever an award of fees is made pursuant to this section — to make a written finding, either in the award or in a separate document, as to the basis and reasons for awarding such fees. The purpose of giving the reasons for such an award (as well as stating reasons when no award is made) is to provide the appellate court with a meaningful basis to review the trial court's exercise of discretion. Needs v. Idaho State Dep't of Cor., 115 Idaho 399, 766 P.2d 1280 (Ct. App. 1988).

Under Idaho R. Civ. P. 54(e)(1), an award of attorney's fees under this section may be made only if the trial court finds that a claim was brought or defended frivolously, unreasonably or without foundation. Jerry J. Joseph C.L.U. Ins. Assocs. v. Vaught, 117 Idaho 555, 789 P.2d 1146 (Ct. App. 1990).

Attorney's fees may not be awarded under this section and Idaho R. Civ. P. 54(e)(1) when there is a legitimate, triable issue of fact to be submitted to a jury, but one (or perhaps both) of the parties assert legal or factual issues which have no support in the law or the facts. Turner v. Willis, 119 Idaho 1023, 812 P.2d 737 (1991).

Where wife argued that an award of attorney's fees at trial and on appeal to the district court was proper under this section and under provisions of the parties settlement agreement, the supreme court held that an award of attorney's fees could not be based on this section because Idaho R. Civ. P. 54(e)(1) supplemented this section and allowed attorney's fees to be awarded by the court only if an action was brought frivolously, unreasonably or without foundation, which was not the situation in the instant case. Noble v. Fisher, 126 Idaho 885, 894 P.2d 118 (1995).

Where the magistrate found that the children of the deceased were the prevailing parties in an action to remove the personal representative of the estate and that they met the criteria for an award of attorney's fees under this section and Idaho R. Civ. P. 54(d)(1)(B), and where the magistrate further found, pursuant to Rules 54(d)(1)(B) and 54(e)(1) that the personal representative's bad faith misuse of estate funds supported the conclusion that her defense of the removal was unreasonable and frivolous, it was not an abuse of discretion for the magistrate to award attorney's fees to the estate for the removal proceedings. Kolouch v. First Sec. Bank, 128 Idaho 186, 911 P.2d 779 (Ct. App. 1996).

Where neither party pursued nor defended an appeal frivolously, unreasonably or without foundation, neither was entitled to an award of attorney's fees on appeal. McAffee v. McAffee, 132 Idaho 281, 971 P.2d 734 (Ct. App. 1999).

Where the supreme court affirmed the lower court on the contractual issues in a case involving a lease, holding that the lease did not exempt the defendant from liability for fires it negligently caused, the plaintiff was

entitled to an award of costs and attorney's fees pursuant to the terms of the lease. Empire Lumber Co. v. Thermal-Dynamic Towers, Inc., 132 Idaho 295, 971 P.2d 1119 (1998).

Where the cross-claimant failed to specifically argue in any of her briefs that the magistrate erred, where she failed to provide any authority for reversal, and where the court found her cross-claim to be frivolously pursued and without foundation, the recognition by the magistrate that the issue of the award of attorney's fees was one of discretion supported a finding that there was no abuse of discretion in the awarding of fees against the cross-claimant. Peasley Transfer & Storage Co. v. Smith, 132 Idaho 732, 979 P.2d 605 (1999).

Appointment of Personal Representative.

If the estate itself, as apart from the personal representative of the estate, was to be entitled to an award of attorney's fees against the surviving spouse, it would be necessary for the estate to establish that the defense by the surviving spouse to an appeal from the order appointing a personal representative was being maintained frivolously, unreasonably or without foundation. Shaw v. Bowman, 101 Idaho 131, 609 P.2d 663 (1980).

Attorney's Fees on Appeal.

Where a plaintiff wife brought an appeal to a district court from a magistrate's determination of property issues in a divorce action, the wife's failure to object to the memorandum of costs filed by the defendant husband in the district court did not constitute a waiver of all objections to the claimed attorney's fees, because the district judge was sitting as an appellate court in this action and, therefore, the district judge was required to determine the appeal in the same manner and upon the same standards of review as an appeal from the district court to the supreme court; thus, Idaho App. R. 41 governed the procedure for applying for attorney's fees on appeal. Griffin v. Griffin, 102 Idaho 858, 642 P.2d 949 (Ct. App. 1982).

Where plaintiffs presented no persuasive argument in support of the contention that the district court, in granting attorney's fees to defendant, abused its discretion or misapplied the law, attorney's fees on appeal were also awarded to defendant. Durrant v. Christensen, 117 Idaho 70, 785 P.2d 634 (1990).

Where judgment for plaintiffs was reversed on appeal, they were not entitled to costs or attorney's fees. Erickson v. State, 132 Idaho 208, 970 P.2d 1 (1998).

The defendants were not entitled to fees on appeal where the plaintiff did not prevail, but the appeal was not frivolous, unreasonable or without foundation. Nerco Minerals Co. v. Morrison Knudsen Corp., 132 Idaho 531, 976 P.2d 457 (1999).

Where the record did not reflect that the plaintiffs' claims were brought or pursued frivolously, but that their arguments had at least some foundation, attorney's fees were not awarded on appeal. Baker v. Sullivan, 132 Idaho 746, 979 P.2d 619 (1999).

Where an appeal was not brought frivolously, the prevailing party was only entitled to costs on appeal, and not attorney's fees. Schilling v. Allstate Ins. Co., 132 Idaho 927, 980 P.2d 1014 (1999), overruled on other grounds, Greenough v. Farm Bureau Mut. Ins. Co., 142 Idaho 589, 130 P.3d 1127 (2006) and Cranney v. Mutual of Enumclaw Ins. Co., 145 Idaho 6, 175 P.3d 168 (2007).

An appeal was not frivolously pursued where the question raised on appeal was the point at which there is objective proof that an individual has suffered some actual damage following a jury trial. Rice v. Litster, 132 Idaho 897, 980 P.2d 561 (1999).

Where the nonprevailing party presented legitimate issues to the reviewing court, no attorney's fees were awarded to the prevailing party. Lamar Corp. v. City of Twin Falls, 133 Idaho 36, 981 P.2d 1146 (1999).

Where the defendants had asked the appellate court to reevaluate or second-guess the trial court's findings based on conflicting evidence and had failed to present any substantial legal argument, the plaintiff was entitled to attorney's fees on appeal. Rowley v. Fuhrman, 133 Idaho 105, 982 P.2d 940 (1999).

The defendant's request for attorney's fees on appeal was denied where the plaintiff's appeal was not brought or pursued frivolously, unreasonably or without foundation. Richard J. & Esther E. Wooley Trust v. DeBest Plumbing, Inc., 133 Idaho 180, 983 P.2d 834 (1999).

The reviewing court declined to award attorney's fees on appeal where the defendant brought some legitimate issues before the court and did not pursue its appeal "frivolously, unreasonably, or without foundation." Perry v. Magic Valley Reg'l Med. Ctr., 134 Idaho 46, 995 P.2d 816 (2000).

Defendant was awarded attorney's fees on appeal where plaintiff argued numerous issues which he failed to preserve for appeal by proper objection, argued with findings of fact and invited the appellate court to substitute its own judgment for that of the trial court, and urged the court to ignore firmly-established law. Kirkman v. Stoker, 134 Idaho 541, 6 P.3d 397 (Ct. App. 2000).

Wife was denied an award of attorney's fees on appeal pursuant to this section because the appeal by the husband had not been brought frivolously or without foundation. Perez v. Perez, 134 Idaho 555, 6 P.3d 411 (Ct. App. 2000).

Because the appeal involved an issue of law concerning the application of state or federal law on a federal law claim brought in state court and this issue had not been decided previously by the Idaho supreme court, the court refused to award attorney's fees. Stanley v. McDaniel, 134 Idaho 630, 7 P.3d 1107 (2000).

Claims for the award of attorney's fees under this section were denied because attorney's fees are not available to a party on appeal from an agency decision under this section. Staff of State Real Estate Comm'n v. Nordling, 135 Idaho 630, 22 P.3d 105 (2001).

Wife's claim for attorney's fees was denied where she was not the prevailing party on appeal, and she failed to cite to a statute or other authority as a basis for her request. Brinkmeyer v. Brinkmeyer, 135 Idaho 596, 21 P.3d 918 (2001).

Where plaintiff's challenge to the application of boundary by agreement was not brought or pursued frivolously, unreasonably, and without foundation, defendant was not entitled to his attorney's fees on appeal. Stafford v. Weaver, 136 Idaho 223, 31 P.3d 245 (2001).

Court properly declined to award the father attorney's fees on appeal because the mother's argument that the father should have been found to be

a habitual perpetrator of domestic violence was not frivolous, unreasonable, or without foundation. King v. King, 137 Idaho 438, 50 P.3d 453 (2002).

Party was not entitled to attorney's fees under this section on the other party's appeal to the district court because the appeal presented a legal question of first impression, and the other party was not entitled to attorney's fees because of not being the prevailing party on appeal. Gustaves v. Gustaves, 138 Idaho 64, 57 P.3d 775 (2002).

Attorney's fees were not awarded to the sister where the brother's belief that he did not oust the sister from the parties' house was not necessarily imprudent and there was no Idaho case law from which the brother could seek guidance on the issue; therefore, the brother's appeal was not frivolous, unreasonable, and without merit. Cox v. Cox, 138 Idaho 881, 71 P.3d 1028 (2003).

No attorney's fees were awarded to either party where neither party brought or defended an appeal frivolously, unreasonably, or without foundation. Pike v. Pike, 139 Idaho 406, 80 P.3d 342 (Ct. App. 2003).

Because parties intentionally chose not to obtain a marriage license and their purported marriage violated state law, summary judgment was properly awarded to defendant in plaintiff's action for divorce, and defendant was entitled to an award of attorney's fees on appeal. Dire v. Dire-Blodgett, 140 Idaho 777, 102 P.3d 1096 (2004).

No award of attorney's fees to the Idaho industrial commission was warranted where the issues raised by the workers were not frivolous; an award of attorney's fees on appeal under this section is appropriate only when the appeal is brought or defended frivolously, unreasonably or without foundation. Owsley v. Idaho Indus. Comm'n, 141 Idaho 129, 106 P.3d 455 (2005).

In trespass case, reviewing court declined to award the owners attorney's fees on appeal because the neighbors had raised valid issues necessitating remand to the district court. Akers v. D. L. White Constr., Inc., 142 Idaho 293, 127 P.3d 196 (2005).

While respondent prevailed on appeal, appellant presented a cogent challenge to the district court's reading of Idaho R. Civ. P. 37(c) and presented legitimate arguments questioning the district court's conclusion

that her denial of respondents' requests to admit was unreasonable. The appeal of the Rule 37(c) award was not frivolous and, therefore, respondent was not entitled to attorney's fees on appeal. Contreras v. Rubley, 142 Idaho 573, 130 P.3d 1111 (2006).

District court erroneously characterized the father's appeal as frivolous where, in view of the decisions of other jurisdictions, holding that questions of work schedules and daycare should not be determinative of child custody, and given that the appellate courts had never directly addressed the question, the father's appeal was not frivolous; his appeal raised a substantive legal issue. Silva v. Silva, 142 Idaho 900, 136 P.3d 371 (Ct. App. 2006).

Respondents were entitled to attorney's fees incurred on appeal, because the appellate court's precedents clearly and repeatedly held that the grounds upon which a court could review an arbitrator's decision were narrow and specifically delineated, and complaints about factual and legal rulings were not among them. Mumford v. Miller, 143 Idaho 99, 137 P.3d 1021 (2006).

Board of county commissioners was not entitled to attorney's fees on appeal because the landowner, who challenged the issuance of a permit for a subdivision, did not bring the appeal frivolously. Cowan v. Bd. of Comm'rs, 143 Idaho 501, 148 P.3d 1247 (2006).

Because of a mixed result in an easement dispute alleging trespass, neither party was entitled to recover attorney's fees on appeal. There was no basis for finding that the appeal was frivolous or unreasonable. Ransom v. Topaz Mktg., L.P., 143 Idaho 641, 152 P.3d 2 (2006).

Attorney fees were not awarded in an appeal involving an easement because neither party acted frivolously. Capstar Radio Operating Co. v. Lawrence, 143 Idaho 704, 152 P.3d 575 (2007).

Adverse summary judgment awarded in an action by an estate, on behalf of a limited liability company, to void allegedly fraudulent conveyances of property did not require an award of attorney fees on appeal because the appeal was not devoid of legitimate issues of law. Estate of E.A. Collins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

In corrections officers' suit based on the disclosure of personal information, where defendants were granted summary judgment, attorney

fees were denied on appeal to the officers and defendants because the officers did not prevail on appeal and did not bring the appeal unreasonably or without foundation. Nation v. State, 144 Idaho 177, 158 P.3d 953 (2007).

In a medical malpractice case, neither party was entitled to attorney fees on appeal; a patient and her husband were not the prevailing parties, and their appeal was not frivolous or unreasonable. McDaniel v. Inland Northwest Renal Care Group-Idaho, L.L.C., 144 Idaho 219, 159 P.3d 856 (2007).

In a collection suit, no attorney fees were awarded on appeal since there was no prevailing party; although a portion of the decision awarding only $200 in attorney fees to a debt collector was upheld, a portion of the decision relating to an award of paralegal fees was remanded for further consideration. Medical Recovery Servs., LLC v. Jones, 145 Idaho 106, 175 P.3d 795 (Ct. App. 2007).

Real estate developer was not entitled to attorney fees on appeal where he did not explain how the architect's defense of the appeal was frivolous; the architect's arguments did not lack foundation in law or fact. Farrell v. Whiteman, 146 Idaho 604, 200 P.3d 1153 (2009).

Employee did not frivolously bring the appeal where the jury found in favor of the employee, awarded $700,000 in damages, and the district court thereafter entered directed verdict against the employee. Waterman v. Nationwide Mut. Ins. Co., 146 Idaho 667, 201 P.3d 640, cert. denied, — U.S. —, 129 S. Ct. 2838, 174 L. Ed. 2d 555 (2009).

Plaintiffs were not entitled to an award of attorney fees on appeal where defendants' appeal was not brought frivolously, unreasonably, or without foundation. Cecil v. Gagnebin, 146 Idaho 714, 202 P.3d 1 (2009).

Mother was not entitled to an award of fees where the father did not bring his appeal frivolously, unreasonably, or without foundation. Instead, he raised legitimate questions of law relating to the standard governing relocation cases in Idaho. Danti v. Danti, 146 Idaho 929, 204 P.3d 1140 (2009).

When an appeal was not timely filed, and it was not well-grounded in fact or warranted by existing law, attorney fees were awarded to a

respondent. Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc., 147 Idaho 56, 205 P.3d 1192 (2009).

Where the trial court properly excluded proposed exhibits, but did so on incorrect grounds, the appeal was not brought frivolously, unreasonably, or without foundation. Thomson v. Olsen, 147 Idaho 99, 205 P.3d 1235 (2009).

Although the landowners defendants prevailed on appeal, they did not do so based upon arguments they made on appeal, and they were declined attorney fees for the appeal. Mesenbrink v. Hosterman, 147 Idaho 408, 210 P.3d 516 (2009).

Property owner was not entitled to attorney fees in a suit brought by a husband and a wife challenging a board of county commissioner's decision to authorize rezoning because, although the husband and the wife did not have a statutory right to judicial review of the board's approval of the conditional rezone and corresponding development agreement, they did not pursue an appeal without a reasonable basis in fact or law. Taylor v. Canyon County Bd. of Comm'rs, 147 Idaho 424, 210 P.3d 532 (2009).

Where there was a genuine issue as to whether a driver had operated insured vehicle with the owner's permission, and where the existence of that permission governed the insurers' obligation, attorney fees were not awarded to respondent insurer, despite the fact that respondent prevailed on appeal. Or. Mut. Ins. Co. v. Farm Bureau Mut. Ins. Co., 148 Idaho 47, 218 P.3d 391 (2009).

Competitor was not entitled attorney fees on appeal based upon a sanitation company's failure to appeal an alternative independent ground for the district court's judgment because the ruling regarding estoppel could reasonably be read as applying only to the contention that the process was an invitation for bids and not a request for proposals and because that question is not an issue on appeal; thus, it was not an alternative independent ground as to whether the Trade Secrets Act was violated. Walco, Inc. v. County of Idaho, 159 Idaho 131, 357 P.3d 856 (2015).

— Award Not Proper.

Confusion in deciding what was proper compensation for trustee due to trustee's inadequate recordkeeping made resort to legal proceedings and

appeals nonfrivolous, thereby negating any award of attorney's fees under this section and Idaho R. Civ. P. 54(e)(1). Grover v. Grover, 109 Idaho 687, 710 P.2d 597 (1985).

Where it could not be said as a matter of law that defendant should have paid plaintiffs the amount of damages sought by the complaint, the award of attorney's fees to plaintiff under Idaho R. Civ. P. 54(e)(1) and this section was improper. Davis v. Professional Bus. Servs., Inc., 109 Idaho 810, 712 P.2d 511 (1985).

Where neither the appeal nor the cross-appeal was brought, pursued, or defended frivolously, unreasonably, or without foundation, it was not a case where the focus of the appeal was the application of settled law to the facts, and there was no overall prevailing party on the appeal, attorney's fees were not awarded to either party. Lewiston Pre-Mix Concrete, Inc. v. Rohde, 110 Idaho 640, 718 P.2d 551 (Ct. App. 1985).

Where in an action against a dairy by cattle owners who leased their cattle to the dairy, the cattle owner's loss was clearly established, but the allocation of liability for the loss turned upon the application of agency principles to complex facts and to an unusual configuration of individual and corporate entities connected with the dairy operation, the defense was not so plainly fallacious as to be frivolous, and the district court abused its discretion by awarding attorney's fees under this section. Herbst v. Bothof Dairies, Inc., 110 Idaho 971, 719 P.2d 1231 (Ct. App. 1986).

The district court improperly exercised its discretion in awarding attorney's fees where the record failed to show that the judge considered the application of common facts to multiple theories, nor did the record contain a determination as to whether the plaintiffs' evidence was sufficient to create a fairly debatable issue under the theories advanced. Associates N.W. v. Beets, 112 Idaho 603, 733 P.2d 824 (Ct. App. 1987).

The trial court did not abuse its discretion in denying an award of fees at trial, where the appeal was not brought, pursued or defended frivolously, unreasonably or without foundation. Thieme v. Worst, 113 Idaho 455, 745 P.2d 1076 (Ct. App. 1987).

Where the court of appeals was not left with the abiding belief that appeal was frivolously or unreasonably pursued, it would deny respondents

request for attorney's fees on appeal. Bischoff v. Quong-Watkins Properties, 113 Idaho 826, 748 P.2d 410 (Ct. App. 1987).

Where the appeal was not taken or pursued frivolously, unreasonably or without foundation, the court of appeals declined to award attorney's fees to the prevailing party. Ada County Hwy. Dist. v. Smith, 113 Idaho 878, 749 P.2d 497 (Ct. App. 1988).

In an action brought by the wife to set aside a divorce property settlement agreement, the wife's appeal was not brought or pursued frivolously, unreasonably or without foundation, and the husband was not entitled to attorney's fees on appeal. Bodine v. Bodine, 114 Idaho 163, 754 P.2d 1200 (Ct. App. 1988).

The district court erred when it imposed costs and attorney's fees for failure to engage in good faith settlement negotiations. Ross v. Coleman Co., 114 Idaho 817, 761 P.2d 1169 (1988).

Where the defendants were the prevailing parties in the jury trial, and the action was not defended frivolously or unreasonably, no award of attorney's fees could be assessed under this section and Idaho R. Civ. P. 54(e)(1) through 54(e)(9) against the defendants, even assuming that the in limine order to prevent reference to the settlement agreement had viability and had only been violated by the defendants. Ross v. Coleman Co., 114 Idaho 817, 761 P.2d 1169 (1988).

An award of attorney's fees to a defendant in a personal injury action was an abuse of discretion where the court based the award upon consideration of matters that were neither issues in the case nor part of the record. See Severson v. Hermann, 116 Idaho 497, 777 P.2d 269 (1989).

Hospital was not entitled to attorney's fees and costs incurred in litigating to determine which of two counties was responsible for medical fees for an indigent patient. IHC Hosps. v. Board of Comm'rs, 117 Idaho 207, 786 P.2d 600 (Ct. App. 1990).

Where, in case involving question of whether an equity buy-in method of determining connection fees of water and sewer system was reasonable and question whether the collection and use of those fees for replacement of system components constituted a revenue raising method not authorized by law, the district court's decision in former similar case contained some dicta

that inferred that the city's collection and use of connection fees might be unauthorized and it was clear that this dicta resulted in some confusion for appellants, the case was not brought frivolously, unreasonably or without foundation and award of attorney's fees was not justified. Loomis v. City of Hailey, 119 Idaho 434, 807 P.2d 1272 (1991).

Attorney's fees were improperly awarded where plaintiffs' attempt to define their rights as the owners of a servient estate, in case regarding property easement was not frivolous nor without basis. Hamilton v. Tax Commission, 119 Idaho 552, 808 P.2d 1297 (1991).

While this section allows fees to be awarded to a prevailing party, the prevailing party must show that the losing party brought, pursued or defended the action frivolously, unreasonably or without foundation; in action seeking to hold third party vicariously liable for plaintiff's torts theory of joint enterprise, district court did not abuse its discretion in denying an award of fees at trial where district judge stated that he believed the joint enterprise theory of recovery "was incorrect but arguable," and that he was "not able to say that this case was frivolous or that it was not in good faith." Maselli v. Ginner, 119 Idaho 702, 809 P.2d 1181 (Ct. App. 1991).

Plaintiffs' legal argument was not so plainly fallacious as to be deemed frivolous, nor was their case not supported by a good faith argument for the extension or modification of the law in Idaho, whether under this section or § 12-123; accordingly, the trial court's award of attorney's fees under either § 12-123 or this section and Idaho R. Civ. P. 54(e)(1) was not appropriate. Hanf v. Syringa Realty, Inc., 120 Idaho 364, 816 P.2d 320 (1991).

Judge, in making award of fees to defendants, improperly relied upon another judge's instruction that the defendants submit an affidavit for their costs and fees since the directive was not an implicit "finding" that plaintiff's action was brought or pursued unreasonably or without foundation, and since Idaho R. Civ. P. 54(e)(2) requires a written finding stating the basis and reasons for awarding attorney's fees, and the defendants did not point to anything in the record of the trial court that satisfied this section. Bonaparte v. Neff, 116 Idaho 60, 773 P.2d 1147 (Ct. App. 1989).

Where appeal involving modification of child support was not entirely frivolous, an award of attorney's fees was vacated. Mecham v. Mecham, 123 Idaho 219, 846 P.2d 221 (1993).

Appeal was not frivolous or unreasonable in light of the lack of authority regarding the standards an Idaho court should apply in deciding a motion to set aside the entry of default under Idaho R. Civ. P. 55(c); therefore, no attorney's fees were awarded on appeal. McFarland v. Curtis, 123 Idaho 931, 854 P.2d 274 (Ct. App. 1993).

Where the language of federal law regulating individual retirement accounts and case law precedents raised issue of law as to whether such federal law preempted Idaho community property law, appeal was not frivolous and attorney's fees would not be awarded on appeal. In re Estate of Mundell, 124 Idaho 152, 857 P.2d 631 (1993).

District court abused its discretion in dismissing law partner from a malpractice claim against legal partnership and, thus, incorrectly awarded attorney's fees to the dismissed partner. Webster v. Hoopers, 126 Idaho 96, 878 P.2d 795 (Ct. App. 1994).

Where the record and arguments made in a divorce action did not lead to a conclusion that the action was brought, pursued, or defended frivolously, nor was unreasonable or without foundation, attorney's fees were inappropriate. Tisdale v. Tisdale, 127 Idaho 331, 900 P.2d 807 (Ct. App. 1995).

Commission lacked authority to award itself costs and fees in the administrative proceeding, as there was no separate provision for the award of attorney's fees and costs within the chapters of the Idaho Code pertaining to the potato commission. Idaho Potato Comm'n v. Russet Valley Produce, Inc., 127 Idaho 654, 904 P.2d 566 (1995) (decision prior to 1984 amendment).

Where Medicaid applicant brought denial of Medicaid benefits before the District Court on appeal from the hearing officer's decision, that proceeding did not constitute a "civil action" as defined by Idaho R. Civ. P. 3(a) and attorney's fees were, therefore, not available under this section. McCoy v. State, Dep't of Health & Welfare, 127 Idaho 792, 907 P.2d 110 (1995).

In a proceeding to modify a divorce decree, where it was determined that the defenses of the party objecting to the proposed modification were not pursued or defended frivolously, unreasonably or without foundation and where the magistrate's decision did not apply the factors set forth in § 32-705, the magistrate's decision to award attorney's fees was in error and could not be upheld. Rohr v. Rohr, 128 Idaho 137, 911 P.2d 133 (1996).

Award of attorney's fees under Idaho R. Civ. P. 54(e)(1) through 54(e)(9) or § 12-120 or this section to mother and state as prevailing parties in paternity action against defendant was improper, as mother did not plead any specific amount of damages as required under § 12-120(1) and the magistrate made no findings that father's defense of the action was frivolous or unreasonable as required under Idaho R. Civ. P. 54(e)(1). Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

There was not substantial and competent evidence to support a finding that power company acted with gross negligence, deviating from the reasonable standards of conduct of the industry and expected by their customers, to support an award of punitive damages when it relocated condominiums' transformers from underground vaults to above ground locations; this award of punitive award damages was reversed and award of attorney's fees was vacated. New Villager Condominium Ass'n v. Idaho Power Co., 129 Idaho 551, 928 P.2d 901 (1996).

Since an award under this section may only be made if the appellate court finds that the appeal was entirely frivolous, unreasonable or without foundation, where plaintiff raised a legitimate issue with respect to the amount of attorney's fees awarded by the district court and obtained relief on appeal with respect to that award, the appeal was not frivolous or unreasonable in its entirety, and thus no fees could be awarded under this section. Landvik ex rel. Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997).

In action concerning selection of site for landfill, trial court should not have awarded landowners attorney's fees on the issue of whether the county failed to provide a method of referendum and/or initiative on the issue, since Idaho R. Civ. P. 54(e)(1) provides that attorney's fees can only be awarded under this section where the court finds that the action was brought, pursued or defended frivolously, unreasonably or without

foundation and the district court did not make such finding and in fact the county did not defend against such claim but admitted it had failed to provide a method of initiative and/or referendum. Petersen v. Franklin County, 130 Idaho 176, 938 P.2d 1214 (1997).

As the defendants prevailed on the summary judgment issue on appeal costs were awarded pursuant to Idaho App. R. 40, but the court declined to award attorney's fees under this section because although the plaintiff's argument urging error in the grant of summary judgment as to these particular defendants was not persuasive, it was not unreasonable or frivolous. Sammis v. MagneTek, Inc., 130 Idaho 342, 941 P.2d 314 (1997).

The defendant's argument, that it should be awarded attorney's fees because the plaintiff's theory of causation was unreasonable and unfounded because they called no experts at trial and based their entire suit on the testimony of one witness, was erroneous and the trial court's refusal to award fees was proper. Lanham v. Idaho Power Co., 130 Idaho 486, 943 P.2d 912 (1997).

Defendant failed to establish, and the record did not indicate, that plaintiff brought or pursued appeal in an unreasonable or frivolous manner, therefore fees were not awarded under this section. Wilson v. Wilson, 131 Idaho 533, 960 P.2d 1262 (1998).

A question of whether a release of an interest in real property necessarily included all appurtenant rights to the property or whether equitable estoppel should apply was a fairly debatable issue; accordingly, action could not be considered frivolous and without foundation and attorney's fees were correctly denied. Sun Valley Hot Springs Ranch, Inc. v. Kelsey, 131 Idaho 657, 962 P.2d 1041 (1998).

Where defendants presented a sufficient issue of contract interpretation, attorney's fees were not awarded to plaintiffs. Mutual of Enumclaw Ins. Co. v. Pedersen, 133 Idaho 135, 983 P.2d 208 (1999).

Plaintiffs' request for fees was denied where the defendants raised serious issues about whether the district judge properly characterized the relationship between the defendants and the plaintiffs and whether the waiver and release provision of their rental agreement should have barred

recovery. Hanks v. Sawtelle Rentals, Inc., 133 Idaho 199, 984 P.2d 122 (1999).

Attorney's fees were not awarded for trial or appeal where the trial court noted that, while it believed the defendant's defense was "nonmeritorious," it did not find that it rose to the level of frivolity. Drew v. Sorensen, 133 Idaho 534, 989 P.2d 276 (1999).

Award of attorney's fees was not awarded where plaintiff's challenge to the discovery sanction imposed by the trial court, though unsuccessful, was not frivolous. Clark v. Raty, 137 Idaho 343, 48 P.3d 672 (Ct. App. 2002).

District court erred in characterizing the husband's appeal as frivolous; in view of appellate decisions that had focused solely upon the financial resources of the party requesting attorney's fees. The husband's appeal was not unreasonable, and his appeal raised a substantive legal issue. Stephens v. Stephens, 138 Idaho 195, 61 P.3d 63 (Ct. App. 2002).

In a subdivision planning board's breach of contract action, the homeowners' appeal from summary judgment granted in favor of the board, in which the trial court determined that the restrictive covenants at issue barred the homeowners' short-term rental of their home because it was a commercial use, was not brought, pursued, or defended frivolously or unreasonably; hence, neither party was entitled to attorney's fees on appeal. Pinehaven Planning Bd. v. Brooks, 138 Idaho 826, 70 P.3d 664 (2003).

Because an appeal required the court to interpret a statute for the first time within the context of this case, neither party was entitled to attorney's fees under either § 12-117 or this section. Sacred Heart Med. Ctr. v. Boundary County, 138 Idaho 534, 66 P.3d 238 (2003).

Attorney's fees were awarded under this section only when the appellate court was left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation; where the contractor prevailed in part on the appeal, it was not brought or pursued frivolously, unreasonably, or without foundation; as such, the county was not awarded attorney's fees on appeal. Waters Garbage v. Shoshone County, 138 Idaho 648, 67 P.3d 1260 (2003).

Defendants were not awarded attorney's fees on appeal, where plaintiffs' appeal was not brought or pursued frivolously, unreasonably, or without

foundation. Israel v. Leachman, 139 Idaho 24, 72 P.3d 864 (2003).

Where landowners appealed from a judgment awarding damages to an irrigation district on their complaint alleging negligence, interference with an easement, and negligence per se for excavation by the landowners that compromised the district's water irrigation ditch and the district cross-appealed the denial of treble damages, attorney's fees were denied to both parties because the position of each on appeal was neither brought nor defended frivolously, unreasonably, or without foundation. Nampa & Meridian Irrigation Dist. v. Mussell, 139 Idaho 28, 72 P.3d 868 (2003).

Although respondents prevailed on appeal, respondents were not entitled to attorney's fees on appeal, where the challenge appellant brought was reasonably founded in fact and law and was not brought frivolously, unreasonably, or without foundation. SE/Z Constr., L.L.C. v. Idaho State Univ., 140 Idaho 8, 89 P.3d 848 (2004).

Supreme court of Idaho declined to award fees to either party because the appeal to the district court and to the supreme court raised issues of importance not previously decided. Lohman v. Flynn, 139 Idaho 312, 78 P.3d 379 (2003).

In an appeal of a trial court's decision that granted plaintiff property owners a prescriptive easement over and through defendant property owners' parcel to access federal lands, neither side was entitled to attorney's fees under this section, because the appeal raised important issues and was not brought or defended frivolously or without foundation. Hodgins v. Sales, 139 Idaho 225, 76 P.3d 969 (2003).

Where the court awarded attorney's fees as a sanction for frivolous or unreasonable conduct, because none of the required procedures for an award of attorney's fees as a sanction under § 12-123 had taken place, the fee award under this section was improper. Roe Family Servs. v. Doe (In re Baby Boy Doe), 139 Idaho 930, 88 P.3d 749 (2004).

Where two drivers collided at an uncontrolled intersection, plaintiff driver was not entitled to recover personal injury damages from defendant driver because each driver was 50 percent negligent for failing to keep a proper lookout, and defendant was not entitled to attorney's fees on appeal;

further, plaintiff's appeal, though unsuccessful, was not frivolous or unreasonable. Vaughn v. Porter, 140 Idaho 470, 95 P.3d 88 (Ct. App. 2004).

Neither party was entitled to attorney's fees on appeal under this section because the appeal was not pursued or defended frivolously, unreasonably, or without foundation. Anderson v. Goodliffe, 140 Idaho 446, 95 P.3d 64 (2004).

Award of attorney's fees by the district court to neighboring property owners, who owned a servient estate, was not appropriate, as the neighboring property owners were not the prevailing parties in an easement dispute, and, further, neither the property owners nor the neighboring property owners were entitled to attorney's fees on appeal, as the appeal was not frivolous. Walker v. Boozer, 140 Idaho 451, 95 P.3d 69 (2004).

Father and his wife attempted to recover attorney's fees in a collection suit brought against their daughter-in-law and their deceased son's estate; however, they were not entitled to attorney's fees as they were not the prevailing party. The daughter-in-law and the estate were not entitled to recover attorney's fees on appeal because the issues raised were not frivolous. Reding v. Reding, 141 Idaho 369, 109 P.3d 1111 (2005).

Where a case involved a novel legal question, attorney's fees should not be granted under this section; the case by respondents and the developers involved novel issues, including a matter of first impression, namely, whether a non-party had standing to challenge an order confirming an arbitration award under Idaho R. Civ. P. 60(b); therefore, attorney's fees were properly not granted. Campbell v. Kildew, 141 Idaho 640, 115 P.3d 731 (2005).

Neighbors were not entitled to attorney's fees on appeal pursuant to this section because the appellate court was not left with an abiding belief that the appeal had been brought or defended frivolously, unreasonably, or without foundation. The district judge's order granting summary judgment in favor of the neighbors was reversed. Armand v. Opportunity Mgmt. Co., 141 Idaho 709, 117 P.3d 123 (2005).

This section permitted an award of attorney's fees in a civil action to the prevailing party if the court determined the case was brought, pursued or defended frivolously, unreasonably or without foundation; the employer's

arguments, although unconvincing, were not frivolous, such that no attorney's fees were awarded to the employee. Dominguez v. Evergreen Res., Inc., 142 Idaho 7, 121 P.3d 938 (2005).

District court erred by awarding attorney's fees to the wife on intermediate appeal, because the magistrate's award of attorney's fees, which was affirmed by the district court, represented an abuse of its discretion when the husband's child custody claim was not frivolous. Lieurance-Ross v. Ross, 142 Idaho 536, 129 P.3d 1285 (Ct. App. 2006).

In civil action by two sisters against prowler for tort claims of invasion of privacy and intentional infliction of emotional distress, award of appellate attorney's fees to plaintiffs was denied where defendant prevailed on some issues and the appeal was not frivolous. Alderson v. Bonner, 142 Idaho 733, 132 P.3d 1261 (Ct. App. 2006).

After determining that the State of Idaho DOT properly denied plaintiff's application to renew his driver's license for failing to provide his social security number, an appellate court declined to award the state attorney's fees because the state conceded that plaintiff's religious beliefs and motivations were sincere. Lewis v. DOT, 143 Idaho 418, 146 P.3d 684 (Ct. App. 2006).

Where a city did not prevail in a declaratory judgment action against several presenters regarding a proposed marijuana initiative, it was not entitled to attorney's fees; moreover, the presenters were not entitled to such fees on appeal either because the appeal had a reasonable basis since a pivotal case on the issue had not yet been decided. Davidson v. Wright, 143 Idaho 616, 151 P.3d 812 (2006).

In a defamation case, no attorney fees were awarded to a political party chairman because he was not the prevailing party on appeal. Clark v. Spokesman-Review, 144 Idaho 427, 163 P.3d 216 (2007).

Crop dusting business's appeal involved issues of first impression and the arguments on appeal were not unreasonable or without foundation; thus, the Idaho supreme court declined to award attorney fees. Bybee v. Isaac, 145 Idaho 251, 178 P.3d 616 (2008).

Attorney fees were not awarded on appeal, because the supreme court had not before addressed the allocation of conveyance loss among water

users in an irrigation district. Nelson v. Big Lost River Irrigation Dist., 148 Idaho 157, 219 P.3d 804 (2009).

Award of attorneys' fees was not warranted with respect to dismissal of a third-party complaint in a bankruptcy case, because the nature of the matter presented was based on federal law, which meant that this state's attorneys' fees provisions would not apply. Reynard v. Karass (In re Saito Bros.), 560 B.R. 540 (Bankr. D. Idaho 2016).

— Award Proper.

Where third-party defendant offered no defense, called no witnesses, presented no supported legal argument in favor of its position, and it did not vigorously cross-examine any of the witnesses called by other parties in an attempt to support its defense, an award of attorney's fees under § 12-120(2), this section, and Idaho R. Civ. P. 54(e) was proper. Del Milam & Sons v. Bailey, 107 Idaho 587, 691 P.2d 1202 (1984).

Under this section, which applies generally to any civil appeal, attorney's fees will be awarded if the court is left with an abiding belief that the appeal was brought frivolously, unreasonably or without foundation; where both magistrate and district judge found that husband failed to establish the necessary elements for relief, his appeal was brought without foundation and wife was entitled to a reasonable attorney's fee award. Simonovich v. Simonovich, 110 Idaho 9, 713 P.2d 445 (Ct. App. 1985).

Where the promissory note stated that the holder of the note would be entitled to collect attorney's fees if suit were brought to collect the note, the obligees under a deed of trust were entitled to the award of such fees after foreclosure of the deed of trust and trustee's sale. Farber v. Howell, 111 Idaho 132, 721 P.2d 731 (Ct. App. 1986).

The trial court did not err in awarding attorney's fees to the defendant at trial pursuant to this section, where the trial court specifically found that the plaintiff initiated the lawsuit without any foundation for its claim. Sunshine Mining Co. v. Metropolitan Mines Corp., 111 Idaho 654, 726 P.2d 766 (1986).

Where the plaintiff's appeal of her dismissal for failure to prosecute did not raise a genuine issue as to the legal standards governing the district judge's discretion, nor did it present a cogent challenge to the judge's

reasoning powers in exercising that discretion, the appeal was brought without foundation, and the defendants were entitled to a reasonable award of attorney's fees. Nagel v. Wagers, 111 Idaho 822, 727 P.2d 1250 (Ct. App. 1986), disapproved as stated in Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82, 982 P.2d 917 (1999).

Where the appellant presented neither a genuine legal issue nor a cogent challenge to the judge's exercise of discretion, the appellees were awarded fees under this section. Evans v. Park, 112 Idaho 400, 732 P.2d 369 (Ct. App. 1987).

Where, in a divorce action, the husband presented neither a genuine legal issue nor a cogent challenge to the judge's exercise of discretion, the wife was awarded fees under this section. McPherson v. McPherson, 112 Idaho 402, 732 P.2d 371 (Ct. App. 1987).

Landowner who brought an action against the sublessee, seed supplier, and tenant farmers to recover the value of its share of wheat harvested from landowner's property by the tenant farmers, was entitled to reasonable attorney's fees on appeal, to be determined by the trial court pursuant to Idaho App. R. 41, where the arguments forwarded by the seed supplier, although apparently sincere, were substantially without merit. NBC Leasing Co. v. R & T Farms, Inc., 114 Idaho 141, 754 P.2d 454 (Ct. App. 1988).

Judge did not err by deciding to award fees under this section without reviewing a transcript of the trial since sufficient facts were presented to the judge upon which he could determine that the action had been "pursued unreasonably" or "without foundation," where the judge examined the entire district court file, where he considered the various legal theories advanced by plaintiff and the extent of discovery undertaken by the parties, and where the judge had court minutes of the trial and other documents. Bonaparte v. Neff, 116 Idaho 60, 773 P.2d 1147 (Ct. App. 1989).

An award under this section is appropriate where an appeal presents no meaningful issue on a question of law but simply invites the appellate court to second-guess the trial judge on conflicting evidence. In such a case a reasonable attorney fee, to be determined under Idaho App. R. 41, may be awarded. Knowlton v. Mudd, 116 Idaho 262, 775 P.2d 154 (Ct. App. 1989).

A boundary dispute in which defendant's conduct was held to have been outrageous, ill-founded and unreasonable was an appropriate case to award attorney's fees. See Skelton v. Haney, 116 Idaho 511, 777 P.2d 733 (1989).

Where the trial court found that plaintiffs' theory as to the source of a fire and the defendant's responsibility was unreasonable and unfounded, based on (1) the improbability or inconsistency of the testimony of some of the plaintiffs' witnesses, (2) evidence that the fire started before the condition the plaintiffs contended was the cause of the fire occurred, and (3) the inconsistency of the physical evidence with the cause advanced by the plaintiffs, and where these findings were supported by the record the award of attorney's fees pursuant to this section and Idaho R. Civ. P. 54(e)(1) was proper. Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 803 P.2d 993 (1991).

Where appeal was brought without any reasonable legal foundation, attorney's fees and costs were properly awarded. Gage v. Harris, 119 Idaho 451, 807 P.2d 1289 (Ct. App. 1991).

Because plaintiff's quiet title action was involuntarily dismissed, he was clearly a nonprevailing party. The district court awarded costs and attorney's fees incurred by the defendant landowners to the extent the costs and attorney's fees were incurred in preparing a defense against plaintiff's claim of prescriptive easement. The district court reached its conclusion through the exercise of reason and did not abuse its discretion in awarding costs and attorney's fees to the defendant landowners. Bonaparte v. Neff, 122 Idaho 714, 838 P.2d 317 (Ct. App. 1992).

Where the appeal was taken and pursued frivolously, unreasonably, and without foundation, and where the lease and option to purchase at issue provided for an award of attorney's fees to the prevailing party in any action for enforcement, attorney's fees in addition to costs were awarded on appeal. Clear Springs Trout Co. v. Anthony, 123 Idaho 141, 845 P.2d 559 (1992).

Where party had agreed in promissory note to pay all costs incurred in collecting the sums due, including attorney's fees on appeal, and where the appeal merely presented an invitation to second-guess the trial court on conflicting evidence and issues not raised below, an award of attorney's fees

to the opposing party was appropriate. Saint Alphonsus Regional Medical Ctr., Inc. v. Krueger, 124 Idaho 501, 861 P.2d 71 (Ct. App. 1993).

The mere fact that an arbitrator's interpretation of a prior case is unsatisfactory to a party is not, of itself, a valid basis for appeal; thus, where the nonprevailing party presented no cogent argument as to why settled law did not apply, the appeal was pursued frivolously and without foundation and attorney, prevailing in professional malpractice case, was entitled to attorney's fees. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995).

A district judge's award of fees was affirmed where he perceived the issue as one of discretion, correctly set out and applied the standard for such an award, and reached his decision by an exercise of reason. Bingham v. Montane Resource Assocs., 133 Idaho 420, 987 P.2d 1035 (1999).

Where plaintiffs filed prescriptive easement suit after only two years, and they were on notice of the deficiency in their case, attorney's fees were properly awarded after defendant's prevailed in the action. Anderson v. Larsen, 136 Idaho 402, 34 P.3d 1085 (2001).

An award of attorney's fees on appeal pursuant to this section is proper only where the state's supreme court is left with the abiding belief that the appeal was brought or pursued frivolously, unreasonably, and without foundation. Elec. Wholesale Supply Co. v. Nielson, 136 Idaho 814, 41 P.3d 242 (2001).

On appeal, an award of attorney's fees may be granted to the prevailing party pursuant to this section and Idaho App. R. 41; such an award is appropriate when the court is left with the abiding belief that the appeal has been brought, or defended frivolously, unreasonably, or without foundation. Hagy v. State, 137 Idaho 618, 51 P.3d 432 (Ct. App. 2002).

Finding in favor of the wife's estate was proper where, pursuant to controlling Indiana law, the alleged agreement involving the division of marital property was not a valid enforceable contract because the agreement was not reduced to writing; further, the wife's estate was entitled to attorney's fees on appeal pursuant to this section and Idaho R. Civ. P. 54(e)(1) because the supreme court stated that the appeal was unreasonable. Sword v. Sweet, 140 Idaho 242, 92 P.3d 492 (2004).

The company was entitled to an award of attorney's fees under this section in a judgment foreclosing a real estate mortgage and quieting title to a portion of the property subject to the mortgage because the individual's appeal consisted simply of raising issues on appeal that were not presented to the trial court and asserting errors by the trial court without any reasoned argument or authority supporting such assertions. KEB Enters., L.P. v. Smedley, 140 Idaho 746, 101 P.3d 690 (2004).

Company was entitled to attorney's fees in its defense of an employee's appeal of the district court's upholding of an arbitration award because § 7-910, preventing attorney's fees absent an express agreement by the parties, only applies to fees incurred in the conduct of the arbitration, not those incurred in proceedings to confirm an arbitration award. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

District court did not err in awarding attorney's fees related to settlement negotiations because to hold otherwise would reward the plaintiff for pursuing a frivolous claim and punish the defendant property owner for attempting to settle a frivolous claim brought against it. Hughes v. Fisher, 142 Idaho 474, 129 P.3d 1223 (2006).

District court's award of attorney fees was proper because the claimants had made no showing that they were record owners in fee simple or were successors in interest or met the elements of adverse possession of a parcel of land, and there was no foundation to pursue the action as against respondents since there was no showing on any of these claims; after taking into account the entire litigation, the district court held that the claimants pursued the litigation frivolously and without foundation. Kiebert v. Goss, 144 Idaho 225, 159 P.3d 862 (2007).

Attorney fees and costs on appeal were awarded to property owners in a boundary dispute, because the appellant/claimant simply asked the reviewing court to second guess the district court and, in doing so, had pursued the appeal unreasonably and without foundation in light of the long-standing law on issues of boundary by agreement. Teton Peaks Inv. Co., LLC v. Ohme, 146 Idaho 394, 195 P.3d 1207 (2008).

Basis for Award.

Since the statutory power is discretionary, attorney's fees will not be awarded as a matter of right, nor will attorney's fees be awarded where the losing party brought the appeal in good faith and where a genuine issue of law was presented; rather, attorney's fees will only be awarded when the supreme court is left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation. Minich v. Gem State Developers, Inc., 99 Idaho 911, 591 P.2d 1078 (1979).

In normal circumstances, attorney's fees will only be awarded when the court is left with the abiding belief that the appeal was brought, pursued, or defended frivolously, unreasonably or without foundation. Minich v. Gem State Developers, Inc., 99 Idaho 911, 591 P.2d 1078 (1979); Johnson v. McPhee, 147 Idaho 455, 210 P.3d 563 (Ct. App. 2009).

Award of attorney's fees under this section was proper where defendant's counterclaim and defense to the original action were frivolous, and where the appeal pursued was without foundation. Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981).

Where a dispassionate view of the record disclosed that there was no valid reason to anticipate reversal of the lower court's judgment on the factual grounds urged, the record contained abundant evidence supporting the determination of the judge and jury, and the arguments and authorities advanced in support of the two legal issues presented on appeal failed to establish how the discretionary decisions of the district court not to bifurcate the issues involved in the trial or to act upon the motion for a view arose to the level of error, costs and attorney's fees would be awarded to the appellees. Rueth v. State, 103 Idaho 74, 644 P.2d 1333 (1982).

Where an appeal presented no meaningful issue on a question of law and, in regard to the trial court's findings, the appellant was unable to do more than dispute minor details and point to conflicts in the evidence, the appellate court was left with the abiding belief that the appeal was brought without foundation, and, thus, the prevailing appellee was entitled to an award of a reasonable attorney fee on appeal. T-Craft Aero Club, Inc. v. Blough, 102 Idaho 833, 642 P.2d 70 (Ct. App. 1982).

Where appeal lacked any significant legal question and the claim involved was of minimal value, the appeal was frivolous and unreasonably

pursued, and attorney's fees would be awarded to the respondent. Huff v. Uhl, 103 Idaho 274, 647 P.2d 730 (1982).

An award of attorney's fees on appeal is appropriate when appellate court is left with the abiding belief that an appeal has been brought or defended frivolously, unreasonably, or without foundation. Barlow's, Inc. v. Bannock Cleaning Corp., 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

The decision in *Minich v. Gem State Developers, Inc*., 99 Idaho 911, 591 P.2d 1078 (1979), narrows the circumstances under which attorney's fees can be awarded on appeal, under this section, even to a litigant who has successfully acted as a private attorney general. Neilsen & Co. v. Cassia & Twin Falls County Joint Class A School Dist. 151, 103 Idaho 317, 647 P.2d 773 (Ct. App. 1982).

An award of attorney's fees on appeal will not be made where a decision is based upon legal authorities from other jurisdictions, and the appeal has helped to develop Idaho case law on the subject; thus, where a lawsuit was characterized by an interface of assignment law with the legal and ethical duties created by the attorney-client relationship, where it generated issues of first impression in Idaho, and where the court of appeals relied largely upon authorities from other jurisdictions to reach, and to support, its decision, no attorney's fees would be awarded on appeal. Bonanza Motors, Inc. v. Webb, 104 Idaho 234, 657 P.2d 1102 (Ct. App. 1983).

Contention that § 6-918A, when viewed in contrast to this section, discriminates impermissibly against those tort plaintiffs whose claims lie against a governmental entity rather than against private parties would not be addressed by court where attorney's fees in particular case could not have been awarded under either statute because of failure to show that case was defended frivolously or without foundation. Packard v. Joint Sch. Dist. No. 171, 104 Idaho 604, 661 P.2d 770 (Ct. App. 1983).

One party's failure to negotiate does not, by itself, establish the opposing party's right to attorney's fees under this section; an award of fees must be supported by a finding that one or more of the criteria prescribed by Idaho R. Civ. P. 54(e)(1) have been satisfied. Bosshardt v. Taylor, 104 Idaho 660, 662 P.2d 241 (Ct. App. 1983).

Where the trial judge observed that no meaningful negotiations to settle case had been entered into between the parties, but expressly declined to find that defendants had defended the case frivolously or in bad faith, the absence of such a finding required reversal of the award of attorney's fees which had been based on judge's desire to make plaintiff "whole." Bosshardt v. Taylor, 104 Idaho 660, 662 P.2d 241 (Ct. App. 1983).

This section is permissive, not mandatory and it contains no subject matter limitation; it may be applied even if the appeal focuses not upon the subject of the underlying litigation but solely upon an award of attorney's fees below. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

A misperception of law or of one's interest under the law is not, by itself, unreasonable conduct; if it were, virtually every case controlled by a question of law would entail an attorney fee award against the losing party under this section. Rather, the question must be whether the position adopted by the losing party was not only incorrect but so plainly fallacious that it could be deemed frivolous, unreasonable or without foundation. Wing v. Amalgamated Sugar Co., 106 Idaho 905, 684 P.2d 307 (Ct. App. 1984).

Where trial court, in awarding attorney's fees pursuant to this section, failed to find that the case was defended frivolously, unreasonably or without foundation and failed to make a written finding as to the basis and reasons for awarding attorney's fees, such award was vacated. Kerr Land & Livestock, Inc. v. Glaus, 107 Idaho 767, 692 P.2d 1199 (1984).

When an order awarding attorney's fees is correct, but has been entered upon an erroneous theory, it will be upheld upon the proper theory. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

A claim is not necessarily frivolous or lacking in merit simply because it ultimately fails as a matter of law; rather, the question is whether the claim, when made and pursued, is so plainly fallacious that it can be termed frivolous, unreasonable or without foundation. Gulf Chem. Employees Fed. Credit Union v. Williams, 107 Idaho 890, 693 P.2d 1092 (Ct. App. 1984).

Where the material facts in the case were not disputed, where the court was not confronted with a choice between reasonable inferences but rather

was asked to draw inferences upon facts not shown in the record and the law governing the case was well settled, attorney's fees were awarded. Lind v. Perkins, 107 Idaho 901, 693 P.2d 1103 (Ct. App. 1984).

An award under this section will not be made unless the appellate court is left with the abiding belief that the appeal was brought or pursued frivolously, unreasonably or without foundation. Rudy-Mai Farms v. Peterson, 109 Idaho 116, 705 P.2d 1071 (Ct. App. 1985).

Attorney's fees are awardable if an appeal does no more than simply invite the appellate court to second-guess the trial court on conflicting evidence, or if the law is well settled and the appellants have made no substantial showing that the district court misapplied the law, or if the appeal has been frivolous, unreasonable or lacking in foundation. Davis v. Gage, 109 Idaho 1029, 712 P.2d 730 (Ct. App. 1985).

The standard for determining whether an award under this section should be made is not whether the position urged by the nonprevailing party is ultimately found to be wrong, but whether it is so plainly fallacious as to be frivolous. Herbst v. Bothof Dairies, Inc., 110 Idaho 971, 719 P.2d 1231 (Ct. App. 1986).

An award of attorney's fees is only proper when an action was either brought or defended frivolously, unreasonably, or without foundation. Soria v. Sierra Pac. Airlines, 111 Idaho 594, 726 P.2d 706 (1986).

An award of attorney's fees under this section is discretionary; but it must be supported by findings and those findings, in turn, must be supported by the record. Sunshine Mining Co. v. Metropolitan Mines Corp., 111 Idaho 654, 726 P.2d 766 (1986).

An award under this section will be made if the appellate court is left with the abiding belief that the appeal was brought or pursued frivolously, unreasonably or without foundation. Nagel v. Wagers, 111 Idaho 822, 727 P.2d 1250 (Ct. App. 1986).

It was inappropriate to award attorney's fees under this section solely on the basis of pleading "alternative and contradictory facts". Murr v. Odmark, 112 Idaho 606, 733 P.2d 827 (Ct. App. 1987).

Attorney's fees are awardable if an appeal does no more than simply invite an appellate court to second-guess the trial court on conflicting

evidence, or if the law is well settled and appellant has made no substantial showing that the district court misapplied the law. Johnson v. Edwards, 113 Idaho 660, 747 P.2d 69 (1987); Lower Payette Ditch Co. v. Harvey, — Idaho —, 271 P.3d 689 (2012).

Where, in an action brought by dissenting shareholders demanding payment for their shares at fair value, the corporation's appeal was not brought frivolously, unreasonably, or without foundation, attorney's fees were not awarded under this section. Waters v. Double L, Inc., 114 Idaho 256, 755 P.2d 1294 (Ct. App. 1987), aff'd, 115 Idaho 705, 769 P.2d 582 (1989).

Attorney's fees will be awarded only when the appeal was brought, pursued, or defended frivolously, unreasonably or without foundation. Hales v. King, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).

Attorney's fees are permitted if the appeal was brought, pursued, or defended unreasonably or without foundation; a defense is not frivolous or groundless merely because the respondent loses. Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988).

Attorney's fees should not be apportioned based upon prevailing theories of recovery, but rather should be awarded based upon application of appropriate standards and factors. Bubak v. Evans, 117 Idaho 510, 788 P.2d 1333 (Ct. App. 1989).

The determination of a prevailing party involves a three-part inquiry; the court must examine (1) the result obtained in relation to the relief sought; (2) whether there were multiple claims or issues; and (3) the extent to which either party prevailed on each issue or claim. Jerry J. Joseph C.L.U. Ins. Assocs. v. Vaught, 117 Idaho 555, 789 P.2d 1146 (Ct. App. 1990).

Where district court awarded attorney's fees but did not articulate the reasons for the award, since in general, attorney's fees will not be awarded on appeal under this section unless the appellate court is left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation, the issue of attorney's fees would be remanded to the district court so that it might state its reasons under *Minich v. Gem State Developers, Inc.*, 99 Idaho 911, 591 P.2d 1078 (1979) for the award. Blanc v. Laritz, 119 Idaho 359, 806 P.2d 452 (Ct. App. 1991).

Request for attorney's fees in action on Idaho R. Civ. P. 60(b) motion alleging mistake in property settlement agreement would be resolved by such agreement which provided that absent a breach of the agreement, each party shall assume and pay their own costs, expenses, and attorney's fees in connection with this action where neither party alleged that the agreement was breached. Thomas v. Thomas, 119 Idaho 709, 809 P.2d 1188 (Ct. App. 1991).

A trial court's consideration of failed settlement negotiations or of a refusal to negotiate a settlement when deciding whether to award attorney's fees is prohibited under Idaho law. Smith v. Angell, 122 Idaho 25, 830 P.2d 1163 (1992).

Attorney's fees under this section may only be awarded by the court when it finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. Hossner v. Idaho Forest Indus., Inc., 122 Idaho 413, 835 P.2d 648 (1992).

The trial court did not abuse its discretion when it determined that neither party prevailed, that the city had not acted frivolously, and that plaintiff was not entitled to costs and attorney's fees, where plaintiff attempted to prevent city from leasing a former hospital to the state for use as a correctional facility. Foster v. City of St. Anthony, 122 Idaho 883, 841 P.2d 413 (1992).

Because an appeal to the district court under the Idaho Administrative Procedure Act does not constitute a "civil action" as defined by Idaho R. Civ. P. 3(a), attorney's fees were not available under this section to county which had its denial of reimbursement to hospital for medical indigency benefits upheld on appeal. University of Utah Hosp. v. Board of Comm'rs, 128 Idaho 529, 915 P.2d 1387 (Ct. App. 1996).

The plaintiffs' requested attorney's fees resulting from the defense of appeal, arguing that the appeal was frivolous, presented no bona fide arguments and advanced no authority, but they did not identify any particular conduct or arguments that they deemed frivolous or unmeritorious, and, on the contrary, the defendants asserted issues that deserved determination on appeal. Thus, there was no basis for an award of attorney's fees to the plaintiffs. Hughes v. State, Dep't of Law Enforcement, 129 Idaho 558, 929 P.2d 120 (1996).

The plaintiff failed to demonstrate an abuse of discretion where the record showed that he maintained that the easement accorded him carte blanche to make such changes in the existing road as he saw fit and where the district court concluded that his position was so plainly fallacious and violative of the rights of the servient landowners that an award of fees to the respondents as the prevailing parties in the action was justified. Conley v. Whittlesey, 133 Idaho 265, 985 P.2d 1127 (1999).

Trial court properly awarded respondents attorney's fees because it found plaintiff's petition to be frivolous, unreasonable and without foundation, in claiming a violation of nonexistent constitutional and statutory rights. Ackerman v. Bonneville County, 140 Idaho 307, 92 P.3d 557 (Ct. App. 2004).

Where a party has asserted claims that are frivolous, unreasonable, or without foundation, the presence of a legitimate, triable issue of fact is not a complete bar to the assessment of attorney fees. Apportionment of attorney fees is appropriate for those elements of the case that were frivolous, unreasonable, and without foundation. Idaho Military Historical Soc'y, Inc. v. Maslen, 156 Idaho 624, 329 P.3d 1072 (2014).

Attorney fee award was properly apportioned, because the fees were awarded only on a frivolous conspiracy-to-defraud claim and not on a breach of the warranty of habitability claim, which raised an issue of first impression as to applicable accrual rules and limitations periods. Petrus Family Trust v. Kirk, 163 Idaho 490, 415 P.3d 358 (2018).

Case of First Impression.

Department of finance's request for attorney's fees on appeal was denied where the central issues on appeal were the interpretation of the word "claim," as found in § 26-2223(2), and whether the corporation's agreement was an assignment for collection purposes or an assignment of the entire claim; there were issues of first impression and a case of first impression did not constitute an area of settled law. PurCo Fleet Servs. v. Idaho State Dep't of Fin., 140 Idaho 121, 90 P.3d 346 (2004).

Land seller was not entitled to attorney fees in a suit brought by a title company to recover an overpayment because the title company had not pursued the action frivolously or without foundation. The issue presented,

that of claim preclusion, was one of first impression. Ticor Title Co. v. Stanion, 144 Idaho 119, 157 P.3d 613 (2007).

City officials were not entitled to an award of attorney fees against a former employee who unsuccessfully sought to hold the officials individually liable under the Idaho protection of public employees act, because the issue of individual liability was previously unsettled. Hammer v. City of Sun Valley, 163 Idaho 439, 414 P.3d 1178 (2016).

Civil Action.

Where a matter before the district court stemmed from a decision of a county zoning commission pursuant to an application filed with said commission and brought before the district court by the filing of an appeal, this matter did not constitute a civil action commenced by the filing of a complaint as required by Idaho R. Civ. P. 3(a), and an award of attorney's fees pursuant to this section was error as the proceeding in question was not a "civil action." Lowery v. Board of County Comm'rs, 117 Idaho 1079, 793 P.2d 1251 (1990).

Where a claimant for unemployment benefits does not file a complaint pursuant to Idaho R. Civ. P. 3(a), but files the claim for benefits according to § 72-1368, the unemployment benefits claim does not constitute a civil action for which attorney's fees can be awarded pursuant to this section. Johnson v. Idaho Cent. Credit Union, 127 Idaho 867, 908 P.2d 560 (1995).

In an employee's appeal of a termination of employment case, a university was not entitled to attorney's fees because the appeal from the decision of the Idaho personnel commission was not a civil action. Horne v. Idaho State Univ., 138 Idaho 700, 69 P.3d 120 (2003).

Matter before the district court was a decision of the Idaho personnel commission (commission) made pursuant to the appeals provision of the Personnel System Act and brought before the district court by the filing of an appeal; these proceedings did not constitute a civil action commenced by the filing of a complaint as required by Idaho R. Civ. P. 3(a); thus, the commission correctly ruled it did not have authority under this section to award fees. Sanchez v. State, 143 Idaho 239, 141 P.3d 1108 (2006).

Former employer was entitled to attorney's fees under this section, because the former at-will employee failed to produce evidence to show

that a genuine issue of material fact existed that the employer committed acts violative of any specific provision of the Idaho Consumer Protection Act or that she engaged in protected activity in response. Venable v. Internet Auto Rent & Sales, Inc., 156 Idaho 574, 329 P.3d 356 (2014).

Claim.

In action involving a contract dispute which arose from a remodeling project that plaintiffs performed for defendants where it was evident based on the record and the arguments made on appeal that court could not say that the appeal was brought frivolously or unreasonably or that it lacked foundation, no attorney's fees were appropriate on appeal. Baker v. Boren, 129 Idaho 885, 934 P.2d 951 (Ct. App. 1997).

Since the ultimate issue — whether a company was entitled to collect on a promissory note — was left unresolved at this stage, the company's request for attorney fees was denied. Sirius LC v. Erickson, 144 Idaho 38, 156 P.3d 539 (2007).

Because the supreme court vacated the judgment of the district court, the property owners' action was not brought frivolously, unreasonably, or without foundation, and the mortgage company was not entitled to an award of attorney fees. PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180 (2009).

— Not Frivolous.

Where court concluded that the partners did not pursue their claim frivolously and without foundation, the court did not abuse its discretion in denying the partnership's claim for attorney's fees. Kelly v. Silverwood Estates, 127 Idaho 624, 903 P.2d 1321 (1995).

Where the plaintiff's argument before the supreme court regarding a district judge's abuse of discretion in striking portions of an expert opinion and denying a motion to reconsider was not persuasive, but neither was it unreasonable or frivolous, the defendant was not entitled to an award of attorney's fees. Smith v. USAA Property & Cas. Ins., 132 Idaho 466, 974 P.2d 1095 (1999).

Where a plaintiff presented legitimate issues relating to an insurer's duty in calculating premiums, his appeal from summary judgment was not

frivolous, and the defendants were not entitled to attorney's fees on appeal. Simper v. Farm Bureau Mut. Ins. Co., 132 Idaho 471, 974 P.2d 1100 (1999).

Where the district court made no findings that the plaintiff brought, pursued or defended his case frivolously, unreasonably or without foundation, attorney's fees were not awardable. Karterman v. Jameson, 132 Idaho 910, 980 P.2d 574 (Ct. App. 1999).

Where counsel readily acknowledged that the argument he made was an extension of existing state tort law, it was not a frivolous or unreasonable argument made without foundation. Turpen v. Granieri, 133 Idaho 244, 985 P.2d 669 (1999).

An appeal of the grant of summary judgment on the issue of an implied easement was not entirely frivolous or without merit as the trial court had not yet decided the issue of whether an implied easement by prior use could be extinguished if use of the disputed way was no longer reasonably necessary. Therefore, attorney's fees were denied. Davis v. Peacock, 133 Idaho 637, 991 P.2d 362 (1999), cert. denied, 529 U.S. 1078, 120 S. Ct. 1697, 146 L. Ed. 2d 502 (2000).

Attorney's fees were denied because the appeal was not frivolous. Williamson v. City of McCall, 135 Idaho 452, 19 P.3d 766 (2001).

Defendant city was denied its request for an award of attorney's fees where the arguments raised by the plaintiff were not frivolous, unreasonable or without foundation. Sanchez v. City of Caldwell, 135 Idaho 465, 20 P.3d 1 (2001).

District court did not abuse its discretion in denying attorney's fees to the individual appellants because the lawsuit was not frivolous or without foundation under the provisions of this section. Thorn Springs Ranch, Inc. v. Smith, 137 Idaho 480, 50 P.3d 975 (2002).

While property owners qualified as the prevailing party to the appeal under this section, the issues presented by the farm on the appeal did not leave the appellate court with the belief that the appeal was pursued frivolously, unreasonably or without foundation; the owners' request for an award of attorney's fees did not meet the standard and was, therefore, denied. Elliott v. Darwin Neibaur Farms, 138 Idaho 774, 69 P.3d 1035, cert. denied, 540 U.S. 1004, 124 S. Ct. 535, 157 L. Ed. 2d 410 (2003).

Supreme court of Idaho declined to award attorney's fees to a county where a county resident's appeal of the application and interpretation of a county ordinance by the adopting county regarding its procedure for granting livestock confinement operation permits was not frivolous. Chisholm v. Twin Falls County (In re Twin Falls County Comm'rs Resolution No. 2001-4), 139 Idaho 131, 75 P.3d 185 (2003).

Property owners were not entitled to attorney's fees in the appeal of a summary judgment granted for them in an easement dispute. It was apparent from their briefs that the property owners' neighbors believed that the property owners' parcel would not be subdivided and would always remain a single lot; although this argument was not persuasive in light of relevant easement law and the wording of the easement agreement, it was not frivolous. McFadden v. Sein, 139 Idaho 921, 88 P.3d 740 (2004).

Grant of summary judgment in favor of the company was proper where the company did not enter into any agreement or make any representation to pay the wife her community property interest in the husband's shares in the event of divorce; further, the district court did not err in denying the company an award of attorney's fees pursuant to this section because the language of the agreements was such that the wife's arguments did not rise to the level of frivolous, unreasonable, or without foundation. Tolley v. THI Co., 140 Idaho 253, 92 P.3d 503 (2004).

In a subrogation case, a court did not err by denying attorney's fees to plaintiffs where, at the time of the lawsuit the law was not settled whether an insurer would be required to pay a proportionate share of costs and attorney's fees when the insurer did not consent to the insured taking action to collect the insurer's claim, it was only after an applicable case was decided that plaintiffs amended their complaint seeking recovery under the common fund doctrine for punitive damages, and the trial court concluded that under the circumstances, it could not say that the insurer's defense of the law suit was frivolous, unreasonable or without foundation. Boll v. State Farm Mut. Auto. Ins. Co., 140 Idaho 334, 92 P.3d 1081 (2004).

Insurer sought attorney's fees in declaratory judgment matter brought by the insurer to determine its duty to defend an investment company, its insured, in the underlying suit. The argument advanced by the investment company that the complaint should be broadly construed to encompass non-

excluded claims was not frivolous. AMCO Ins. Co. v. Tri-Spur Inv. Co., 140 Idaho 733, 101 P.3d 226 (2004).

Request for attorney's fees on grounds that an estate's claims were frivolous was denied because the estate's arguments were based on the good faith belief that actions by an estate for personal injury damages could have survived. Estate of Shaw v. Dauphin Graphic Machs., Inc., 392 F. Supp. 2d 1230 (D. Idaho 2005), rev'd in part, 240 Fed. Appx. 177 (9th Cir. 2007).

Where health district reasonably, but erroneously, believed that it, and not the department of environmental quality, was the appropriate agency to re-impose sanitary restrictions on a developed, commercial property, attorney's fees will not be awarded to the developer even though the health district was found to have acted beyond its statutory authority. Sunnyside Indus. & Prof'l Park, LLC v. Eastern Idaho Pub. Health Dist., 147 Idaho 668, 214 P.3d 654 (Ct. App. 2009).

Condemnation.

In condemnation proceeding, where landowners were entitled to award of attorney's fees only if they could show entitlement under this section: trial judge did not err in finding that case was not pursued frivolously or unreasonably, as required by Idaho R. Civ. P. 54(e)(1), so as to warrant award of attorney's fees. State ex rel. Moore v. Lawson, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983).

An award of reasonable attorney's fees to the condemnee in an eminent domain proceeding is a matter for the trial court's guided discretion and, as in other areas of the law, such award will be overturned only upon a showing of abuse. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

Attorney's fees and costs are allowable, in eminent domain proceedings, under Idaho R. Civ. P. 54(d)(1); however, such fees and costs are not mandatory as within the definition of just compensation. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

In condemnation actions, attorney's fees may be awarded to the condemnee without a showing and finding that the action was brought and pursued "frivolously, unreasonably or without foundation." Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

Attorney's fees and other expenses are not recoverable in a condemnation proceeding, except as authorized by statute. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

In determining award of attorney's fees to a condemnee, the court should consider the following factors: whether the condemnor reasonably made a timely offer of settlement of at least 90 percent of the ultimate jury verdict and whether such offer was made within a reasonable period after the institution of the action; any controverting of the public use and necessity allegations; the outcome of any hearing thereon and any modification in the plans or design of the condemnor's project resulting from the condemnee's challenge; and whether the condemnee voluntarily granted possession of the property pending resolution of the just compensation issue. As to the amount of attorney's fees awardable, the criteria outlined in Idaho R. Civ. P. 54(e)(3) are appropriate in condemnation, as in all other civil cases; however, the court should not automatically adopt any contingent fee or contractual arrangement, but rather the fee awarded may be more or less than that provided in the lawyer-client contract. Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi, 105 Idaho 873, 673 P.2d 1067 (1983), overruled on other grounds, State v. Grathol, — Idaho —, 343 P.3d 480 (2015).

Contract Cases.

When a contract is clear and unambiguous, the reviewing court uses the plain meaning of the words, not the intent of the parties. Thus, where city, as third-party beneficiary, did not demonstrate than any terms of the sublease were ambiguous and, as such, had failed to establish that there was a genuine issue of fact which would have made district court's summary judgment award improper, city's appeal was without foundation and respondent was entitled to an award of attorney's fees on appeal. Navarrete v. City of Caldwell, 130 Idaho 849, 949 P.2d 597 (Ct. App. 1997).

Costs.

An attorney fee award made pursuant to this section may properly be included as costs. Averitt v. City of Coeur d'Alene, 100 Idaho 751, 605 P.2d 515 (1980).

Counterclaim on Open Account.

Where defendant's counterclaim was an action on an open account for sums owed him for feeding and caring for plaintiff's cattle, as prevailing party on that counterclaim, the defendant was entitled to attorney's fees as a matter of statutory right and not merely in the court's discretion. Torix v. Allred, 100 Idaho 905, 606 P.2d 1334 (1980).

Criminal Cases.

A successful criminal appellant cannot recover attorney's fees under § 12-120 and this section which apply to only civil actions or under Idaho App. R. 40 and 41, absent an explicit statutory authorization. State v. Roll, 118 Idaho 936, 801 P.2d 1287 (Ct. App. 1990).

Default Judgment.

In an action brought by a musician to recover royalties on music, attorney's fees, recoverable where a default judgment was entered, were limited to the amount stated in a complaint. Holladay v. Lindsay, 143 Idaho 767, 152 P.3d 638 (Ct. App. 2006).

Denial Proper.

District judge correctly determined that neither party prevailed and, therefore, he did not abuse his discretion in determining the parties were not entitled to fees. Brown v. Miller, 140 Idaho 439, 95 P.3d 57 (2004).

In a wrongful birth action, trial court did not abuse its discretion in denying the doctor attorney's fees under this section because the patient presented a sufficient issue of statutory interpretation to preclude such an award. Vanvooren v. Astin, 141 Idaho 440, 111 P.3d 125 (2005).

District court did not abuse its discretion in determining that there was no prevailing party, because the claimant did not prevail on the issue of dissociation, but he did prevail regarding the cost of the backhoe, and the

partner did not prevail on his cross-appeal. Costa v. Borges, 145 Idaho 353, 179 P.3d 316 (2008).

District court declined to award attorney fees pursuant to this section where it found the real estate broker and his wife had not pursued their claims frivolously, unreasonably, or without foundation. Taylor v. Maile, 146 Idaho 705, 201 P.3d 1282 (2009).

District court did not abuse its discretion in failing to award attorney fees to defendants, because, even though much of plaintiff's case was frivolous and she might have somewhat abused the process in the district court, she presented a novel issue related to the standard required to succeed on a 42 U.S.C.S. § 1983 claim for violations of her own rights resulting from the county's interference with her relationship with her adult son who committed suicide while in jail. Hoagland v. Ada County, 154 Idaho 900, 303 P.3d 587 (2013), cert. denied, — U.S. — 134 S. Ct. 1024, 188 L. Ed. 2d 119 (2014).

Determination of Award.

The trial court should have determined separately the amount of the total attorney's fees which were attributable to the defense of the main action of plaintiffs and how much was attributable to the defense of the counterclaim, and then awarded those claims separately. Jensen v. Shank, 99 Idaho 565, 585 P.2d 1276 (1978).

Where trial court made no finding as to the time allocated to defending homeowners against claim by real estate broker but, rather, based its determination on what had been awarded to potential purchasers when they prevailed in dismissal of the third-party complaint by homeowners against them, the trial court failed to properly take into consideration the factors enumerated in Idaho R. Civ. P. 54(e)(3) and case must be remanded for redetermination of amount of attorney's fees. Logosz v. Childers, 105 Idaho 173, 667 P.2d 276 (Ct. App. 1983).

The introduction of hourly time sheets into evidence is not a prerequisite to an award of reasonable attorney's fees; however, an award of attorney's fees must be supported by findings which must, in turn, be supported by the record. Hackett v. Streeter, 109 Idaho 261, 706 P.2d 1372 (Ct. App. 1985).

In determining whether or not to award attorney's fees under this section, the trial courts may not consider the extent of any settlement negotiations which the parties may or may not have engaged in. Anderson v. Anderson, Kaufman, Ringert & Clark, 116 Idaho 359, 775 P.2d 1201 (1989).

The percentage of pages in an appellate opinion discussing defendant's liability was not an appropriate factor to consider in allocating attorney's fees. Davidson v. Beco Corp., 116 Idaho 696, 778 P.2d 818 (Ct. App. 1989).

Attorney's fees incurred on appeal could not be awarded under this section since the case was remanded for a new trial and it had not yet been determined whether requester of fees was the prevailing party in the litigation; however, attorney's fees incurred for the appeal could be taken into account by the trial court in determining the amount of fees which ultimately should be awarded to the prevailing party at the conclusion of the litigation. Quinto v. Millwood Forest Prods., Inc., 130 Idaho 162, 938 P.2d 189 (Ct. App. 1997).

Where neither a plaintiff nor a defendant was a prevailing party since both achieved partial success, but a codefendant received nearly all of the relief sought, no award of fees to the codefendant was warranted since there was no showing of the fees incurred solely on behalf of the codefendant. Morrarty v. Morton (In re Morton), 2009 Bankr. LEXIS 3260 (Bankr. D. Idaho Oct. 12, 2009).

Effective March 1, 2017, the courts of this state will apply the standard originally expressed by the legislature in awarding attorney fees — prevailing parties in civil litigation have the right to be made whole for attorney fees they have incurred "when justice so requires." Hoffer v. Shappard, 160 Idaho 868, 380 P.3d 681 (2016) (see 2017 amendment).

Discretion of Court.

Where final judgment was entered November 26, 1976, this section was applicable, and since the sum of $4250 was found to be reasonable by the trial judge, and the award was made so as to do complete justice between the litigants, the award was well within the trial court's discretionary powers under this section. Minich v. Gem State Developers, Inc., 99 Idaho 911, 591 P.2d 1078 (1979).

Where the defendant's defense, though unsuccessful was offered in good faith with no intent to delay or hinder justice, the trial court did not abuse its discretion in denying attorney's fees. Cunningham v. Bundy, 100 Idaho 456, 600 P.2d 132 (1979).

Where the record reflected that, at a hearing held on the objection to the attorney's fees, the parties stipulated to the effect In that each party would call as a witness an attorney who would testify as to his opinion of a reasonable charge; that the witness for defendants would testify to the effect that the fees set forth in the cost bill were reasonable, and that the witness for plaintiffs would testify to the effect that the fees should be charged at a lesser rate than those set forth in the affidavit as to attorney's fees, under these circumstances the award of attorney's fees by the trial court was within its discretionary power. Futrell v. Martin, 100 Idaho 473, 600 P.2d 777 (1979).

Where, as a grounds for providing it with attorney's fees, a bank argued that a customer's suit was "frivolous," but where the lower court paid much attention to the fact that the customer appeared pro se and it could have properly concluded that he believed his suit was not "frivolous," the lower court did not abuse its discretion in denying attorney's fees to the bank. Palmer v. Idaho Bank & Trust, 100 Idaho 642, 603 P.2d 597 (1979).

Where there was no showing that the $300 attorney fee award made in a suit to recover on claim against estate constituted an abuse of the district court's discretion, the award to the estate was affirmed. Tanner v. Estate of Cobb, 101 Idaho 444, 614 P.2d 984 (1980).

Where the state department of health and welfare failed to demonstrate, and the record did not reveal, that the district court abused its discretion when it denied an award of attorney's fees to the department on an appeal from a hearing officer's administrative decision which affirmed the termination of the recipients' public assistance grants, the district court's denial of attorney's fees would not be disturbed. Tappen v. State, Dep't of Health & Welfare, 102 Idaho 807, 641 P.2d 994 (1982).

Prior to the advent of Idaho R. Civ. P. 54(e)(1), this section, standing alone, gave the trial court broad discretion to award attorney's fees to prevailing parties; therefore, where in an unlawful detainer action filed before the effective date of the rule, both parties partially prevailed, but one

party prevailed on all the issues except one, the trial court did not abuse its discretion in awarding attorney's fees to that party. Haskin v. Glass, 102 Idaho 785, 640 P.2d 1186 (Ct. App. 1982).

The award of attorney's fees rests in the sound discretion of the trial court and the burden is on the person disputing the award to show an abuse of discretion. Anderson v. Ethington, 103 Idaho 658, 651 P.2d 923 (1982).

While a genuine issue may appear on the face of the pleadings and affidavits, it does not necessarily follow that the evidence introduced at trial sustains that position; accordingly, where, at the end of the trial, the court concluded that a third-party complaint was without reasonable foundation, the fact that it had previously found for the party on summary judgment did not necessarily establish that the complaint was reasonable and well founded, and the award of attorney's fees to the prevailing party was not an abuse of discretion. Anderson v. Ethington, 103 Idaho 658, 651 P.2d 923 (1982).

Where there was no clear showing that the trial judge abused or failed to exercise his discretion in awarding attorney's fees, the awards would not be set aside, and the assertion that a small portion of the trial court's decision indicated a failure to exercise discretion was untenable in light of the remainder of the decision wherein the trial court reviewed all objections to the claimed costs and attorney's fees and, clearly utilizing his discretion, disallowed some costs and substantially reduced the claimed attorney's fees. City of Nampa v. McGee, 104 Idaho 63, 656 P.2d 124 (1982).

In those instances wherein attorney's fees can properly be awarded, the award of attorney's fees rests in the sound discretion of the trial court and the burden is on the person disputing the award to show an abuse of discretion. Hellar v. Cenarrusa, 106 Idaho 571, 682 P.2d 524 (1984).

An award of attorney's fees under this section is discretionary; but it must be supported by findings and those findings, in turn, must be supported by the record. Wing v. Amalgamated Sugar Co., 106 Idaho 905, 684 P.2d 307 (Ct. App. 1984).

A district court's determination when awarding attorney's fees that an action was frivolously defended will not be overturned absent an abuse of discretion; however, the district court must consider all relevant factors in

exercising its sound discretion. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

An award of attorney's fees under this section rests within the sound discretion of the district judge, but when a fairly debatable claim is deemed frivolous for no stated reason other than its ultimate failure upon a point of law, discretion has been abused. Gulf Chem. Employees Fed. Credit Union v. Williams, 107 Idaho 890, 693 P.2d 1092 (Ct. App. 1984).

Idaho R. Civ. P. 54(e)(1) only applies to actions filed after March 1, 1979; thus, where the action was filed well before Rule 54(e) became effective, the trial court incorrectly assumed that he was bound by the rule, when in fact his exercise of discretion in considering an award of fees under this section was not subject to the limitations of that rule. Due to the trial judge's erroneous assumption, attorney's fees were denied on improper grounds. Pichon v. L.J. Broekemeier, Inc., 108 Idaho 846, 702 P.2d 884 (Ct. App. 1985).

Objections to the memorandum of costs must be made within ten days of its service under Idaho R. Civ. P. 54(d)(6); however, a failure to timely object does not automatically entitle the prevailing party to the attorney's fees requested. An award of attorney's fees under this section is discretionary with the trial court; lack of an objection does not preclude the court from exercising its discretion in deciding whether to award attorney's fees under Idaho R. Civ. P. 54(d)(1)(D). Long v. Hendricks, 109 Idaho 73, 705 P.2d 78 (Ct. App. 1985).

The district court did not abuse its discretion in not awarding attorney's fees in view of the large damage claims against the defendant and the complexity of the case. Soria v. Sierra Pac. Airlines, 111 Idaho 594, 726 P.2d 706 (1986).

The determination to award or not award attorney's fees is committed to the discretion of the trial court. Soria v. Sierra Pac. Airlines, 111 Idaho 594, 726 P.2d 706 (1986).

Where issues of discretion are involved, an award of attorney's fees is proper if the appellant fails to make a cogent challenge to the judge's exercise of discretion. Andrews v. Idaho Forest Indus., Inc., 117 Idaho 195, 786 P.2d 586 (Ct. App. 1990).

Where the court was not left with the abiding belief that an appeal was pursued frivolously, unreasonably or without foundation, an award of attorney's fees was properly withheld from the prevailing party in an action which sought to set aside a stipulated settlement. Artiach Trucking, Inc. v. Wolters, 118 Idaho 656, 798 P.2d 938 (Ct. App. 1990).

The court abused its discretion in holding a defendant equally liable with codefendant for costs and fees in a quiet title action where plaintiff named defendant as a defendant without alleging any acts of wrongdoing on her part and the plaintiff had stipulated to dismissal of the defendant prior to trial without making any claim against her for costs or fees. Platt v. Brown, 120 Idaho 41, 813 P.2d 380 (Ct. App. 1991).

When an exercise of discretion is involved, an appellate court conducts a three-step analysis: (1) whether the trial court properly perceived the issue as one of discretion; (2) whether that court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by the exercise of reason. Savage Lateral Ditch Water Users Ass'n v. Pulley, 125 Idaho 237, 869 P.2d 554 (1994).

Where the district court perceived that the awarding of attorney's fees under this section was discretionary, and where the court acted within the boundaries of its discretion, reaching its decision to deny fees by an exercise of reason, the denial was affirmed. Treasure Valley Concrete, Inc. v. State, 132 Idaho 673, 978 P.2d 233 (1999), overruled on other grounds, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012).

Because the record did not establish that the district court applied the standards set forth in *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 803 P.2d 993, (1991) in exercising its discretion to award attorney's fees, the case was remanded for the district court to consider the claim for attorney's fees and to specify the basis of any award or denial of an award. Simons v. Simons, 134 Idaho 824, 11 P.3d 20 (2000).

Awarding of attorney's fees and costs under this section, and Idaho R. Civ. P. 54(e)(1) and 54(d)(1) is within the discretion of the trial court and subject to an abuse of discretion standard of review; the burden is on the party disputing the award of attorney's fees to show an abuse of discretion. Burns v. Baldwin, 138 Idaho 480, 65 P.3d 502 (2003).

Claimant's request for attorney's fees under this section was denied even though the claimant was the prevailing party, because the trial court properly exercised its discretion consistent with the appropriate legal standards and reached the decision to deny attorney's fees based upon the exercise of reason. Roark v. Bentley, 139 Idaho 793, 86 P.3d 507 (2004).

Trial court did not abuse its discretion in denying the parent attorney's fees because the issue of whether the charter school could maintain an action for libel and slander was a debatable issue; the district judge had broad discretion to apportion the attorney's fees the parent claimed, and no abuse of that discretion occurred. Nampa Charter Sch., Inc. v. Delapaz, 140 Idaho 23, 89 P.3d 863 (2004).

An award under this statute is not a matter of right to the prevailing party, but is appropriate only when the court, in its discretion, is left with the abiding belief that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. Kilborn v. Haun (In re Haun), 396 B.R. 522 (Bankr. D. Idaho 2008).

An award of attorney fees under this section is discretionary, but it must be supported by findings; and those findings, in turn, must be supported by the record. Westover v. Idaho Counties Risk Mgmt. Program, 164 Idaho 385, 430 P.3d 1284 (2018).

Divorce Actions.

Section 32-704(2) is not the exclusive avenue available to a party seeking attorney's fees in a divorce action. A court may award fees based on financial need under § 32-704, however, this section applies to all civil actions. Hentges v. Hentges, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Where a wife's appeal of a divorce decree was unavailing, but was not frivolous, unreasonable or without foundation, the district judge abused his discretion in awarding attorney's fees to husband under this section. Hentges v. Hentges, 115 Idaho 192, 765 P.2d 1094 (Ct. App. 1988).

Where the husband's appeal was driven by his dissatisfaction with the magistrate judge's factual findings, and he had done little more than invite the appellate court to second-guess the magistrate's findings, attorney's fees were appropriately awarded to the wife on appeal. Reed v. Reed, 137 Idaho 53, 44 P.3d 1108 (2002).

In divorce proceedings, magistrate erred in awarding attorney's fees to wife on the basis that husband's child custody claim was frivolous because he was subject to a guardianship and, therefore, was absolutely precluded from seeking custody, because a parent with a guardian is not absolutely precluded from exercising any level of custody of his or her child. Lieurance-Ross v. Ross, 142 Idaho 536, 129 P.3d 1285 (Ct. App. 2006).

In a property division action as part of a divorce, a former wife was not entitled to attorney's fees because the previously unsettled state of the law on the characterization of professional goodwill made an award of attorneys fees inappropriate, and because the wife made no showing of necessity to the court. Stewart v. Stewart, 143 Idaho 673, 152 P.3d 544 (2007).

Failure to Award.

Where an appeal from an order refusing to set aside a default judgment afforded the court of appeals an important occasion to define the standards which should govern appellate review of decisions to grant or to deny relief from default judgments, and the appeal may well have been encouraged by the supreme court's decisions in several prior cases, the court of appeals would not assess attorney's fees against the appellant in favor of the respondents who were the prevailing parties. Avondale on Hayden, Inc. v. Hall, 104 Idaho 321, 658 P.2d 992 (Ct. App. 1983).

No attorney's fees were awarded in a case that raised issues of first impression to the supreme court regarding whether, pursuant to signature requirements of Idaho R. Civ. P. 11(a)(1), an agent could sign a complaint on behalf of unrepresented parties and where the original complaint was thus signed was it in violation of rule, and where there was no consensus as to how other courts had treated those issues, so the arguments presented were reasonable and not frivolous. Black v. Ameritel Inns, Inc., 139 Idaho 511, 81 P.3d 416 (2003).

Failure to Negotiate.

The failure to enter into or conduct settlement negotiations is not a basis for awarding attorney's fees under this section nor under Idaho R. Civ. P. 54(e)(1) through 54(e)(9). Anderson v. Anderson, Kaufman, Ringert & Clark, 116 Idaho 359, 775 P.2d 1201 (1989).

Failure to Raise Issue.

Plaintiff contended that the district court abused its discretion in awarding attorney's fees because plaintiff offered a new argument which was not presented to the district court, either before or after remand. Because plaintiff raised the issue for the first time in a second appeal, the court of appeals would not address it. Bonaparte v. Neff, 122 Idaho 714, 838 P.2d 317 (Ct. App. 1992).

In a tort action, a painter and attorney were not entitled to attorney's fees under § 12-120(3), despite the fact that the underlying action was based on a commercial transaction; because the painter and the attorney did not offer argument in support of their claim for attorney's fees under this section, an appellate court declined to consider the issue. McPheters v. Maile, 138 Idaho 391, 64 P.3d 317, cert. denied, 540 U.S. 888, 124 S. Ct. 269, 157 L. Ed. 2d 159 (2003).

Findings.

Where a personal injury action was initiated prior to March 1, 1979, the effective date of Idaho R. Civ. P. 54(e)(1), it was not necessary for the trial court to make the findings presently required by that rule before awarding attorney's fees under this section. Quincy v. Joint Sch. Dist. No. 41, 102 Idaho 764, 640 P.2d 304 (1981).

If a prevailing party makes a specific contention that one or more of the criteria of Idaho R. Civ. P. 54(e)(1) through 54(e)(9) have been satisfied, the court should state its reasons for declining to award attorney's fees. Otherwise, the appellate court has no meaningful basis to review the trial court's exercise of discretion. First Sec. Bank v. Absco Whse., Inc., 104 Idaho 853, 664 P.2d 281 (Ct. App. 1983).

Findings are required under Idaho R. Civ. P. 54(e)(2) only when a court awards attorney's fees pursuant to this section. Devine v. Cluff, 110 Idaho 1, 713 P.2d 437 (Ct. App. 1985).

The absence of specific findings of fact and conclusions of law providing a basis and reason for awarding attorney's fees requires a reversal and remand for additional findings and conclusions. Thus, where district court's findings in instant case did not explain its decision to award attorney's fees, such reversal and remand was necessary. Snipes v. Schalo, 130 Idaho 890, 950 P.2d 262 (Ct. App. 1997).

Fraud.

Every party found to have committed fraud is not automatically required to pay the opposing party's attorney's fees for having unsuccessfully defended against the claim of fraud. It is possible for defendants to raise a reasonable, yet unsuccessful, defense against a claim of fraud. Haney v. Molko, 123 Idaho 132, 844 P.2d 1382 (Ct. App. 1992).

Frivolous and Unreasonable Defense.

Department of correction's defense in habeas corpus proceeding was frivolous and unreasonable because the disciplinary report which the department continued to defend did not contain notice concerning the date and time of the hearing to be held with regard to a certain alleged violation, and it also lacked any description of the alleged violation. Needs v. State, 118 Idaho 207, 795 P.2d 912 (Ct. App. 1990).

Frivolous Appeal.

Where appellant did not point to any finding of fact, with one exception, which was not supported by substantial and competent evidence and that exception did not affect the trial court's ultimate conclusions of law, nor did he ask the court to establish any new legal standards, nor to modify or clarify any existing standards, the appeal was brought frivolously, unreasonably and without foundation. Therefore, the court awarded attorney's fees to the respondents. Fairchild v. Fairchild, 106 Idaho 147, 676 P.2d 722 (Ct. App. 1984).

Although, with one exception, the issues raised by the defendant on appeal were frivolous and without foundation, the only exception was settled by a decision issued after the defendant's briefs had been filed; therefore, the defendant's appeal was nonfrivolous, and the court of appeals declined to award attorney's fees on appeal to the state tax commission. Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

Where the appeal was brought frivolously, unreasonably and without foundation, attorney's fees were awarded on appeal. Keller v. Rogstad, 112 Idaho 484, 733 P.2d 705 (1987).

Attorney's fees will be awarded to the prevailing party on appeal when the court of appeals is left with the abiding belief that the appeal was

brought, pursued or defended frivolously, unreasonably or without foundation. Sinclair & Co. v. Gurule, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988).

Where the investor's appeal was frivolous and without foundation, the court of appeals awarded attorney's fees on appeal to a futures commission merchant. Sinclair & Co. v. Gurule, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988).

Where husband's appeal was brought frivolously and without foundation and merely disputed the trial court's factual findings by pointing to conflicts in the evidence, wife was entitled to an award of a reasonable attorney fee on appeal. Krebs v. Krebs, 114 Idaho 571, 759 P.2d 77 (Ct. App. 1988).

Where neither the board of county commissioners nor its counsel actively advocated the position found to be frivolous by the district court, but the board tried to maintain a passive, nonpartisan and removed posture on appeal, while at the same time explaining its decision below, the district court erred in deeming the board's response to the appeal as frivolous and without foundation, and actions of this board and its counsel did not justify an award of fees. Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988).

A district court may award fees pursuant to this section against an administrative tribunal that undertakes a frivolous appeal. Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988).

Attorney's fees are not recoverable on appeal under § 45-513; however, an award could be made under this section, but only if the court of appeals found that defendant's appeal was brought or pursued "frivolously, unreasonably or without foundation." Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co., 115 Idaho 373, 766 P.2d 1254 (Ct. App. 1988).

Where, in connection with a motion to review an order for summary judgment, the movants offered no additional authority, theory, or reason for amending the original summary judgment, nor did they cite any error in the district court's original ruling, the district court did not abuse its discretion by awarding reasonable attorney's fees to the prevailing party, as it found from the facts presented to it that the case was brought, pursued or defended

frivolously, unreasonably or without foundation. Zehm v. Associated Logging Contractors, 116 Idaho 349, 775 P.2d 1191 (1988).

Although defendants have submitted voluminous briefing to the court of appeals, much of this briefing deals with issues previously argued before the court and their additional arguments were without merit or foundation; thus, the appeal was brought unreasonably and without foundation. Federal Land Bank v. Parsons, 118 Idaho 324, 796 P.2d 533 (Ct. App. 1990).

Because Idaho R. Civ. P. 54(e)(1) through 54(e)(9) are procedural in nature, the court of appeals was not bound by them or this section, and where standing arguments and state law claims were meritless because, as held by the district court, the failure to post the required bond precluded the appellants' actions, the court awarded the appellees attorney's fees for the frivolous appeal. Bell v. City of Kellogg, 922 F.2d 1418 (9th Cir. 1991).

Respondents are entitled to an award of attorney's fees on appeal where nonprevailing party invited the court of appeals to do no more than second-guess the trial court on conflicting evidence and, in addition, the law was well-settled. Blaser v. Cameron, 121 Idaho 1012, 829 P.2d 1361 (Ct. App. 1991).

Since the state building authority is a public instrumentality and not an agency within the meaning of § 12-117, subsection (3) of § 12-120, and not § 12-117, is the applicable section for the awarding of attorney's fees in an action brought by architects against authority for architectural services performed under contract. Moreover since the action was not brought, pursued or defended frivolously, unreasonably or without foundation, attorney's fees cannot be awarded under this section. Bott v. Idaho State Bldg. Auth., 122 Idaho 471, 835 P.2d 1282 (1992).

In view of the magistrate's finding, supported by substantial evidence, that wood stove was personal property and not a fixture, there was no merit to purchaser's alternative contention that the stove was conveyed to him under the terms of the written real estate agreement. The appeal was brought frivolously, unreasonably, and without foundation and, accordingly, the sellers' request for attorney's fees under this section was granted. Everitt v. Higgins, 122 Idaho 708, 838 P.2d 311 (Ct. App. 1992).

Appeal was brought, pursued or defended frivolously, unreasonably or without foundation where plaintiff did not present any good faith arguments for reversing the judgment of the lower court awarding defendant's costs and attorney's fees, nor did he present any genuine issue of law. Therefore, the court of appeals awarded attorney's fees on appeal as well to the defendants. Bonaparte v. Neff, 122 Idaho 714, 838 P.2d 317 (Ct. App. 1992).

Husband's motion was frivolous and without basis where husband raised issues unrelated to a special clause in divorce decree allowing a motion to modify only in relation to items in the stipulation, and husband also raised additional new issues without facts to support a request for relief under Idaho R. Civ. P. 60(b). Lunn v. Lunn, 125 Idaho 193, 868 P.2d 521 (Ct. App. 1994).

In a prosecution by client against attorney for legal malpractice, it was an abuse of discretion for the trial court to award attorney's fees against client under this section; client's prosecution of his negligence claim on remand was neither unreasonable nor frivolous in light of *Thompson v. Park*, 122 Idaho 698, 838 P.2d 305 (1992); attorney's submission of supplemental affidavits did not vitiate that holding and render prosecution frivolous. Thompson v. Pike, 125 Idaho 897, 876 P.2d 595 (1994).

When an appeal is decided by reference to legal authorities in other states, and therefore helps to develop Idaho law, the appeal is not frivolous. Klassert v. Wadley, 117 Idaho 424, 788 P.2d 239 (Ct. App. 1990).

Because the plaintiff's appeal was not frivolous or without any reasonable basis in fact or law, the defendant's request for attorney's fees pursuant to this section was denied. Moser v. Coca-Cola N.W. Bottling Co., 129 Idaho 709, 931 P.2d 1227 (Ct. App. 1997).

Appeal was ruled frivolous where defendant argued that because jury verdict was one lump sum, the trial court could not have possibly known what damages the jury award covered; considering the jury verdict was less than the total amount of itemized medical bills, it was evident that the jury gave no award for lost wages or pain and suffering, and to argue otherwise was frivolous. Collins v. Jones, 131 Idaho 556, 961 P.2d 647 (1998).

Where appellants failed to present a meaningful question of law on appeal, and instead merely asked the court to second-guess the decisions of the trial court, attorney's fees for his defense of the frivolous appeal were awarded to the appellee. Fairfax v. Ramirez, 133 Idaho 72, 982 P.2d 375 (Ct. App. 1999).

Defendant's request for attorney's fees on appeal pursuant to this section was denied where the appeal was not brought or pursued frivolously, unreasonably or without foundation. D.A.R., Inc. v. Sheffer, 134 Idaho 141, 997 P.2d 602 (2000).

Ground water district's appeal of a decree granting a water right to claimants lacked foundation in law, was unreasonable, and justified an award of attorney's fees to the claimants under this section. N. Snake Ground Water Dist. v. Gisler, 136 Idaho 747, 40 P.3d 105 (2002).

Award of attorney's fees was appropriate where plaintiffs had numerous opportunities to correct the deficiencies in their case, and their arguments regarding an affidavit lacked foundation, and were based on U.S. supreme court cases that had not been adopted as the rule in Idaho. Carnell v. Barker Mgmt., Inc., 137 Idaho 322, 48 P.3d 651 (2002).

No attorney's fees were awarded in an appeal involving a dispute over a public roadway established by prescription because the appellate court was not left with the abiding belief that the appeal was brought, pursued, or defended frivolously, or without foundation. John W. Brown Props. v. Blaine County, 138 Idaho 171, 59 P.3d 976 (2002).

Appellate court refused to award attorney's fees on appeal in a dispute involving a school district election because there was no evidence that the appeal was brought, pursued, or defended frivolously, unreasonably, or without foundation. Johnson v. Boundary Sch. Dist. # 101, 138 Idaho 331, 63 P.3d 457 (2003).

Once a defense of res judicata is blatantly apparent, further litigation is frivolous, warranting an award of attorney's fees. Burns v. Baldwin, 138 Idaho 480, 65 P.3d 502 (2003).

Trial court did not err when it awarded attorney's fees to a company that had fully paid an award of damages in California but was being sued in Idaho for payment of judgment interest that had been disallowed by the

appellate court in California. Burns v. Baldwin, 138 Idaho 480, 65 P.3d 502 (2003).

Two clerks were awarded attorney's fees in an appeal from the dismissal of an inmate's 42 U.S.C.S. § 1983 claim based on access to the courts because the appeal was frivolous, unreasonable, or without foundation. Drennon v. Hales, 138 Idaho 850, 70 P.3d 688 (Ct. App. 2003).

An award of attorney's fees on appeal in favor of the insurer was proper where the appeal was frivolous because the insured presented no substantial legal argument. Sprinkler Irrigation Co. v. John Deere Ins. Co., 139 Idaho 691, 85 P.3d 667 (2004).

Because a debtor's appeal of an order denying a motion for disqualification of a judge in quiet title action was frivolous, invalid, and without foundation, creditors were entitled to attorney's fees and costs on appeal. Merrill v. Gibson, 139 Idaho 840, 87 P.3d 949, cert. denied, 543 U.S. 926, 125 S. Ct. 311, 160 L. Ed. 2d 225 (2004).

Injured customer was entitled to recover attorney's fees pursuant to this section because the store's appeal was unreasonable where the store raised many issues, such as whether the jury's award was excessive, that were not properly before the court on appeal because they were not raised before the trial court, and many claims that were not supported by the facts or had no basis in law. Vendelin v. Costco Wholesale Corp., 140 Idaho 416, 95 P.3d 34 (2004).

County was entitled to attorney's fees pursuant to this section where the taxpayers were clearly aware of the statutory procedures, failed to appeal separate appraisals, were well advised on the applicable law by the district court, but nevertheless chose to appeal. Castrigno v. McQuade, 141 Idaho 93, 106 P.3d 419 (2005).

Where appellant brought a frivolous appeal of a district court judgment declaring the existence of an easement, the respondents were awarded costs and attorney's fees under this section. Turner v. Cold Springs Canyon Ltd. P'ship, 143 Idaho 227, 141 P.3d 1096 (2006).

In a case involving a dispute over a real estate sale, a prospective seller was not entitled to recover attorney fees because the case was not frivolous

in nature. Cristo Viene Pentecostal Church v. Paz, 144 Idaho 304, 160 P.3d 743 (2007).

Respondents in a boundary-dispute case were entitled to an award of attorney fees on appeal because the appellants had simply invited the appellate court to second-guess the trial court on conflicting evidence. Downey v. Vavold, 144 Idaho 592, 166 P.3d 382 (2007).

In a mother's challenge to a child custody decision, as it was frivolous of her to argue on appeal that the father should not have been granted joint custody when it was the only request she properly made before the magistrate court. Father was entitled to attorney fees on appeal. Michalk v. Michalk, 148 Idaho 224, 220 P.3d 580 (2009).

Where plaintiff voluntarily dismissed some of his claims as to a defendant and then re-raised those claims on appeal, his appeal, as to those issues, was frivolous, and the defendant was entitled to an award of costs and attorney fees related to those claims. Davidson v. Davidson, 150 Idaho 455, 248 P.3d 242 (Ct. App. 2011).

In a quiet title action, appellee was entitled to appellate attorney fees because, based on the number of appellant's claims and general inability to provide coherent argument or authority, the appeal could only be interpreted as a means to increase the cost of litigation and to harass. Mclean v. Cheyovich Family Trust, 153 Idaho 425, 283 P.3d 742 (2012).

On grantors' third attempt to have the supreme court overturn a decision that quieted title in the grantees, and where issues were not properly addressed by argument or authority, the court awarded attorney fees to the grantees. Bagley v. Thomason, 155 Idaho 193, 307 P.3d 1219 (2013), cert. denied, 572 U.S. 1061, 134 S. Ct. 1889, 188 L. Ed. 2d 913 (2014).

Property owner was entitled to statutory attorney fees in an action involving dispute of his title to real property that he had deeded to an individual lender as security for his repayment of loans, as the lender's claims on appeal were frivolous, unreasonable, or without foundation, and at times were directly and clearly rebutted by the district court's findings, which the lender had accepted. Steuerer v. Richards, 155 Idaho 280, 311 P.3d 292 (2013).

Theater owner was entitled to costs and fees on appeal, because a consumer's appeal was frivolous, unreasonable, and without foundation, where he simply invited the court to reweigh the evidence presented to the district court, presented no evidence or law that an existing Idaho law was violated, and did not present a good faith argument for the extension of Idaho law. Doble v. Interstate Amusements, Inc., 160 Idaho 307, 372 P.3d 362 (2016), cert. denied, — U.S. —, 137 S. Ct. 343, 196 L. Ed. 2d 263 (2016).

Genuine Issue on Appeal.

On appeal from a judgment in an unlawful detainer action, the landlords were not entitled to an award of attorney's fees where the matters raised by the renters on appeal presented genuine issues of law and the appeal was brought in good faith. Haskin v. Glass, 102 Idaho 785, 640 P.2d 1186 (Ct. App. 1982).

Where the evidence showed that a wife's appeal to the district court, from a magistrate's determination of property issues in a divorce action, seriously addressed the then unresolved and genuine issue of the transmutation of her husband's property from separate to community property, the district judge improperly determined that the husband was entitled to attorney's fees since the appeal was not brought or pursued frivolously, unreasonably or without foundation. Griffin v. Griffin, 102 Idaho 858, 642 P.2d 949 (Ct. App. 1982).

Where appeal presented genuine issues concerning the district court's fee award, and appellee had not acted frivolously, unreasonably or without foundation in responding to the appeal, no attorney's fees on appeal should be awarded. DeWils Interiors, Inc. v. Dines, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

Where an appeal presents a genuine issue of law for review, the court of appeals will not award attorney's fees on appeal under this section. Gillingham v. Swan Falls Land & Cattle Co., 106 Idaho 859, 683 P.2d 895 (Ct. App. 1984).

Where the appeal presents no meaningful issue on a question of law, but simply invites the appellate court to second-guess the trial judge on questions of fact, an award of attorney's fees is appropriate. DeMarco v. Stewart, 107 Idaho 555, 691 P.2d 801 (Ct. App. 1984).

When a controlling decision on a point of law was decided after proceedings in a lower court but before the filing of an appeal to a higher court on that same point of law, an award of attorney's fee was proper in the appellate court but not in the lower court since at the appellate level no genuine issue of law existed while at the trial court level the issues of law were still unsettled. Gulf Chem. Employees Fed. Credit Union v. Williams, 107 Idaho 890, 693 P.2d 1092 (Ct. App. 1984).

In denying the plaintiff's motion for attorney's fees, the court correctly ruled that the defendant's defense of liability was not frivolous, unreasonable or without foundation even though the defendant abandoned it; the mere fact that the defendant's able counsel made a tactical decision to admit liability prior to trial, without more, did not indicate that the defendant previously had defended the issue unreasonably. Spreader Specialists, Inc. v. Monroc, Inc., 114 Idaho 15, 752 P.2d 617 (Ct. App. 1987), overruled on other grounds, Walton, Inc. v. Jensen, 979 P.2d 118 (Ct. App. 1999).

Where the issues presented by the appellant were entirely justified, the respondents were not entitled to attorney's fees on appeal. Ashe v. Hurt, 114 Idaho 70, 753 P.2d 281 (Ct. App. 1988), aff'd, 117 Idaho 266, 787 P.2d 252 (1990).

In an action by a niece challenging the instrument creating her uncle's inter vivos trust which denied her any share of income from the principle, the court properly denied assessment of attorney's fees against the niece; her contention presented a close legal question concerning the ambiguity of the trust, and her appeal was not frivolous. Allen v. Dennie, 116 Idaho 913, 782 P.2d 36 (Ct. App. 1989).

On appeal, property owners did not show the district court misapplied the law relating to their inverse condemnation claim; however, the property owners made some valid arguments relating to their claim for inverse condemnation, which demonstrate that the appeal was not frivolous or unreasonable and, accordingly, county was not entitled to attorney's fees as the prevailing party. Covington v. Jefferson County, 137 Idaho 777, 53 P.3d 828 (2002).

Where the district court did not correctly apply the law with regard to the amount of credit to be paid to the other driver's insurer, and the outcome of

the case was mixed, attorney's fees were inappropriate. Schaffer v. Curtis-Perrin, 141 Idaho 356, 109 P.3d 1098 (2005).

Neither appellee county nor appellee finance company were entitled to an award of attorney fees under either this section or under § 12-117 because, as to the former, neither appellee had prevailed on the issue that was appealed, i.e., standing, and as to the latter, the issue that was appealed was not brought without a reasonable basis in law or fact since appellant taxpayers prevailed on it although, because the matter was moot, the appeal was dismissed. Koch v. Canyon County, 145 Idaho 158, 177 P.3d 372 (2008).

Respondents were entitled to an award of attorney fees on appeal because appellants' arguments only asked the state supreme court to second-guess the district court's determinations regarding a prescriptive driveway easement. Benninger v. Derifield, 145 Idaho 373, 179 P.3d 336 (2008).

Improper Award.

The district court abused its discretion in awarding attorney's fees to the plaintiff where it was the plaintiff who filed the declaratory judgment action in which the award was rendered, and where defendant's action for negligent supervision was supported by a good faith argument for the extension or modification of state law. Allstate Ins. Co. v. Mocaby, 133 Idaho 593, 990 P.2d 1204 (1999).

In General.

This section, as interpreted by Idaho R. Civ. P. 54(e)(1), is procedural in nature, and, unlike § 12-120(2), it does not grant a substantive right for additional relief in specific actions; it deals instead with the inherent right of courts to control, when circumstances demand, vexatious practices before them. Wetzel v. Goldsmith (In re Comstock), 16 Bankr. 206 (Bankr. D. Idaho 1981).

Idaho R. Civ. P. 54(e)(1) creates no substantive right to attorney's fees, but merely establishes a framework for applying this section. Huff v. Uhl, 103 Idaho 274, 647 P.2d 730 (1982).

This section authorizes the court to award reasonable attorney's fees to the prevailing party on appeal, not as a matter of right, but only where the court is left with the abiding belief that the appeal was brought, pursued or

defended frivolously or without foundation. Thompson v. Pike, 125 Idaho 897, 876 P.2d 595 (1994).

Attorney's fees on appeal are appropriate under Idaho R. Civ. P. 54(e)(1) and this section, if the appellate court is left without an abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. United States Nat'l Bank v. Cox, 126 Idaho 733, 889 P.2d 1123 (Ct. App. 1995).

Attorney's fees are not available in an appeal from an order of the Idaho public utilities commission because this type of case is not commenced by a complaint filed in a court action, as required by this section. Eagle Water Co. v. Idaho Pub. Utils. Comm'n, 130 Idaho 314, 940 P.2d 1133 (1997).

Attorney's fees may be awarded pursuant to this section on appeal if the supreme court of Idaho is left with an abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation; an award of attorney's fees is appropriate if the law is well-settled and the appellants have made no substantial showing that the district court misapplied the law. Burns v. Baldwin, 138 Idaho 480, 65 P.3d 502 (2003).

Trial court did not abuse its discretion in awarding fees to the insurer where the owner's claim was unreasonable and without foundation; there was no indication that judgment creditors occupied some different status than the injured parties. Graham v. State Farm Mut. Auto. Ins. Co., 138 Idaho 611, 67 P.3d 90 (2003).

An award of attorney fees pursuant to this section is inappropriate where a party merely cites to the code section and fails to provide any argument as to why the party is entitled to the award. Marek v. Lawrence, 153 Idaho 50, 278 P.3d 920 (2012).

When deciding whether attorney fees should be awarded under this section, the entire course of the litigation must be taken into account; and, if there is at least one legitimate issue presented, attorney fees may not be awarded, even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation. Phillips v. Blazier-Henry, 154 Idaho 724, 302 P.3d 349 (2013).

If there is a legitimate, triable issue of fact or a legitimate issue of law, attorney fees may not be awarded under this section, even though the losing party has asserted some factual or legal claims that are frivolous, unreasonable, or without foundation. Eden v. State (In re SRBA Case No. 39576), 164 Idaho 241, 429 P.3d 129 (2018).

Interest.

No prejudgment interest would accrue upon the award of costs and attorney's fees; the award simply bears the judgment rate of interest of 18% from its effective date. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

Interlocutory Appeals.

Where an appeal is interlocutory in nature and the action will be remanded for further proceedings, neither party is the prevailing party on appeal and no attorney's fees can be then awarded. However, when the district court makes its prevailing party determination on remand, any award of attorney fees made at that time may include attorney fees for the interlocutory appeal. Terra-West, Inc. v. Idaho Mut. Trust, LLC, 150 Idaho 393, 247 P.3d 620 (2010).

Malpractice Action.

An action for legal malpractice is a tort action, and even though the underlying transaction which resulted in the malpractice was a "commercial transaction," attorney's fees under § 12-120(3) are not authorized. Fuller v. Wolters, 119 Idaho 415, 807 P.2d 633 (1991).

In a professional malpractice action against an insurance company and the law firm that it retained to represent its insured after the insured prevailed and the insurance company and law firm failed to pursue attorney fees, the law firm and the insurance company were entitled to recover attorney fees after receiving summary judgment in their favor; the insured failed to present legal authority in support of its claim that its reputation as an aggressive litigator was damaged by the failure to pursue attorney fees and because the insured misrepresented legal authority in support of its claim against the insurance company. J-U-B Eng'rs, Inc. v. Sec. Ins. Co., 146 Idaho 311, 193 P.3d 858 (2008).

Medical Malpractice.

Where evidence suggested strongly that plaintiff herself believed the accident was covered by § 6-1012 and it was not until she was left without an expert to support her position that she developed the theory — a theory which goes against the clear and unambiguous language of the statute and a theory for which plaintiff cannot find support for in any language in the statute, its legislative history, or Idaho case law — that she now presents on appeal, the court found such appeal frivolous, unreasonable and without foundation and awarded reasonable attorney's fees to the respondents. Hough v. Fry, 131 Idaho 230, 953 P.2d 980 (1998).

In a medical malpractice action, although the physician prevailed on count one regarding negligence during the actual surgery, he did not prevail on count two, regarding negligence during his postoperative treatment, meaning that he was not the prevailing party and was not entitled to an award of attorney's fees. Conway v. Sonntag, 141 Idaho 144, 106 P.3d 470 (2005).

Where the physician's arguments, while unpersuasive, raised issues concerning proximate cause that were not frivolous, unreasonable, or without foundation, the appellate court declined to award attorney's fees to the patient. Newberry v. Martens, 142 Idaho 284, 127 P.3d 187 (2005).

"Miller Act" Suit.

Unless there is a separate state claim at the trial level, attorney's fees are not available in a Miller Act (40 U.S.C.S. § 270a) suit, even when state law provides for such an award. United States ex rel. Leno v. Summit Constr. Co., 892 F.2d 788 (9th Cir. 1989).

Multiple Claims.

Attorney's fees are not appropriate under this section and Idaho R. Civ. P. 54(e)(1) through 54(e)(9), unless all claims brought or all defenses asserted are frivolous and without foundation. Where there are multiple claims and multiple defenses, it is not appropriate to segregate those claims and defenses to determine which were or were not frivolously defended or pursued. The total defense of plaintiff's proceedings must be unreasonable or frivolous. Management Catalysts v. Turbo W. Corpac, Inc., 119 Idaho 626, 809 P.2d 487 (1991).

Municipal Corporations.

It is within the district court's discretion to make a cost award against a municipality to a prevailing party in an action brought in district court. Averitt v. City of Coeur d'Alene, 100 Idaho 751, 605 P.2d 515 (1980).

Attorney's fees may, in a proper case, be asserted against a county or municipality. Averitt v. City of Coeur d'Alene, 100 Idaho 751, 605 P.2d 515 (1980).

District court properly granted summary judgment to the land owners where their property squarely fit into an exception in the city's resolution for extension of water services outside its boundaries for properties under a refundable water extension contract; the imposition of attorney's fees was proper, since the city's denial was frivolous in light of its clearly expressed policy and exception. Albee v. Judy, 136 Idaho 226, 31 P.3d 248 (2001).

Not Frivolous.

Because the court was not left with an abiding belief that defendant's appeal was brought frivolously, unreasonably, or without foundation, the court declined cross-claim defendants' request for attorney's fees, but allowed costs. Heritage Excavation, Inc. v. Briscoe, 141 Idaho 40, 105 P.3d 700 (Ct. App. 2005).

Where factual posture of the case was complex, no Idaho case law was clearly on point, and the intertwined role of the original owner and developer as both the prior owner and developer and mortgagee of the property, neither appeal was brought frivolously and no award of attorney's fees was warranted. West Wood Invs. v. Acord, 141 Idaho 75, 106 P.3d 401 (2005).

In a water rights dispute between the United States and a livestock company, the district court properly denied the livestock company's claim for attorney fees because the United States did not assert a claim or defense frivolously, unreasonably, or without foundation. Joyce Livestock Co. v. United States (In re SRBA Case No. 39576), 144 Idaho 1, 156 P.3d 502, cert. denied, 552 U.S. 990, 128 S. Ct. 487, 169 L. Ed. 2d 339 (2007).

In a condominium resident's declaratory judgment action arguing that the condominium complex owners' prior lease of his unit's garage to a third party was invalid, neither party was entitled to attorney fees as the interpretation of the covenant was a matter of first impression, and neither

party acted frivolously, unreasonably, or without foundation. Thompson v. Ebbert, 144 Idaho 315, 160 P.3d 754 (2007).

Mother was not entitled to attorney fees on the intermediate or current appeal because the father presented to the district court an issue never previously addressed by appellate courts and correctly challenged the computation of the mother's income by the magistrate; thus, neither of his appeals was frivolous. Harris v. Carter, 146 Idaho 22, 189 P.3d 484 (Ct. App. 2008).

Although the post-conviction petitioner's arguments were unsuccessful, they did not warrant an award of attorney fees to the state. The standard for equitable tolling had never been clearly spelled out, and its application to many of the issues raised by the petitioner was a matter of first impression for the supreme court. Rhoades v. State, 148 Idaho 247, 220 P.3d 1066 (2009).

When a party pursues an action which contains fairly debatable issues, the action is not considered to be frivolous and without foundation. A claim is not necessarily frivolous simply because the district court concludes it fails as a matter of law. A misperception of the law, or of one's interest under the law, is not, by itself, unreasonable. Rather, the question is whether the position adopted was not only incorrect, but also so plainly fallacious that it could be deemed frivolous, unreasonable, or without foundation Garner v. Povey, 151 Idaho 462, 259 P.3d 608 (2011).

Because the issue of whether filing an amended complaint restarted the time for serving the summons and complaint under Idaho R. Civ. P. 4(a)(2) had not been considered previously, the patient's appeal was not entirely frivolous, unreasonable, or without foundation, and defendant's request for attorney fees was denied. Elliott v. Verska, 152 Idaho 280, 271 P.3d 678 (2012).

Though respondents prevailed on appeal in a quiet title action, they were not entitled to appellate attorney fees. Although the foundation of appellants' case was weak, because of ambiguous language in a plat, their case was not altogether without foundation. Ross v. Dorsey, 154 Idaho 836, 303 P.3d 195 (2013).

In a personal injury case, attorney fees were not awarded to a deceased landlord's personal representative because an appeal relating to the duty of care owed by the landlord to a tenant's social guest presented issues of unresolved law and a good faith request to extend existing law. Robinson v. Mueller, 156 Idaho 237, 322 P.3d 319 (Ct. App. 2014).

Title company unsuccessfully sued by a bank for negligence and breach of contract in the distribution of proceeds of a non-judicial foreclosure under Montana law could not recover bad faith appellate attorney's fees against the bank, because the bank's appeal was not in bad faith, given the uncertain state of applicable law. First Bank of Lincoln v. Land Title of Nez Perce Cty., Inc., — Idaho —, — P.3d —, 2019 Ida. LEXIS 206 (Nov. 18, 2019).

Objection Timely Filed.

Defendant's objection to costs and fees was deemed timely where the court was unable to determine from the record when the memorandum of costs was filed. Allstate Ins. Co. v. Mocaby, 133 Idaho 593, 990 P.2d 1204 (1999).

Offset Against Child Support.

Where the court did not discuss the welfare of the children before offsetting father's attorney's fees against the child support payments and where the record showed mother had two children in need of support and could not provide for them on her own, it was not proper for the trial court to reduce child support payments in order to satisfy an award of attorney's fees. Ireland v. Ireland, 123 Idaho 955, 855 P.2d 40 (1993), overruled on other grounds, Zenner v. Holcomb, 147 Idaho 444, 210 P.3d 552 (2009).

Parental Termination.

Considering the seriousness of the liberty interest affected in a parental termination case, the appeal to reexamine conflicting evidence was not frivolous. Doe v. Roe, 133 Idaho 805, 992 P.2d 1205 (1999).

Although whether to award attorney fees was an admittedly close call in a termination of parental rights case brought by grandparents, because the bulk of the parent's arguments essentially asked the court to reweigh the evidence, rather than address any legal errors by the trial court, and because of the profound and fundamental liberty interest at stake and the presence of

some conflicting testimony at trial, the appellate court properly denied the grandparents' request for attorney fees. Doe v. Doe (In re Doe), — Idaho —, 454 P.3d 1130 (2019).

Partition of Property.

Where the purchasers of property at a partition sale could not continue to effectively protect their interests absent involvement, as amicus curiae, in an appeal from a decision enforcing the partition judgment and finalizing the sale, the purchasers would be awarded costs and attorney's fees. Mendenhall v. Caine, 101 Idaho 628, 619 P.2d 146 (1980).

Party Obtaining New Trial.

Where attorney misconduct resulted in a grant of a new trial, it was premature to determine whether the party obtaining the new trial should be allowed attorney's fees and costs incurred during the first trial without waiting for a new trial to determine who ultimately prevails, and where the district court appropriately declined to award costs and fees but at plaintiffs' request issued a certificate of finality under Idaho R. Civ. P. 54(b), so that the order could be appealed, the certificate was improvidently granted and constituted an abuse of that court's discretion. Robertson v. Richards, 118 Idaho 791, 800 P.2d 678 (1990).

Personal Injury.

The district court did not err in giving due consideration to defendant's refusal to make any advances on plaintiff's sum-certain medical bills in awarding attorney's fees to a prevailing personal injury plaintiff, especially given defendant's belated admission of liability. Turner v. Willis, 116 Idaho 682, 778 P.2d 804 (1989).

In suit for personal injuries suffered at concert where, when complaint was filed, information as to who had sponsored the concert was in the exclusive possession of defendant and once plaintiff had the opportunity to explore the issue in discovery it should have been abundantly clear that defendant had engaged in no activity that would have imposed upon him any responsibility to concert attendees, the action should have been dismissed; therefore, defendant was entitled to attorney's fees for that portion attributable to legal services after it was clear that it became frivolous and unreasonable for plaintiff to persist in pursuing the claim

against defendant. Landvik ex rel. Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ct. App. 1997).

Personal Injury Action.

In personal injury action, where the defendant made a settlement offer of $7,500 which the plaintiff refused, the plaintiff subsequently made a settlement offer of $55,000 which defendant refused and, following trial, a jury verdict awarded plaintiffs $18,821.95, the trial court abused its discretion in awarding plaintiffs' attorney's fees on ground that the matter had been unreasonably defended because defendant's offer of $7,500 was neither a reasonable or good faith offer of settlement; it was clear that the trial court was attempting to penalize defendant for failing to submit a good faith offer of settlement or refusing to enter into good faith settlement negotiations, which it had no discretion to do; moreover, when contrasting plaintiff's offer of $55,000 with the ultimate jury verdict of approximately $19,000 it could be seen that plaintiff was as much at fault as defendant with respect to the making of unreasonable offers since it is as incumbent upon one party as the other to enter into good faith negotiations or make a good faith offer of settlement. Payne v. Foley, 102 Idaho 760, 639 P.2d 1126 (1982).

A trial court may, in its discretion, and upon proper findings, award attorney's fees in an action for personal injuries when the matter has been defended frivolously, unreasonably or without foundation; however, it is axiomatic that those findings of the trial court must be supported by the record, or any such award of attorney's fees will constitute an abuse of discretion. Payne v. Foley, 102 Idaho 760, 639 P.2d 1126 (1982).

After remanding an insured's suit against an insurer for arbitration, a court declined to award the insured attorney's fees where there was no evidence that the insurer had acted unreasonably in the proceedings. Deeds v. Regence Blueshield of Idaho, 143 Idaho 210, 141 P.3d 1079 (2006).

Prevailing Party.

This section authorizes attorney fee awards only to prevailing parties. Barlow's, Inc. v. Bannock Cleaning Corp., 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

Plaintiff in quiet title action could not be awarded his attorney's fees where he did not prevail on the merits. Fairchild v. Fairchild, 106 Idaho 147, 676 P.2d 722 (Ct. App. 1984).

Where, in a prescriptive easement action, extensive factual contentions were presented which were argued under fairly debatable legal principles, simply being a prevailing party was not sufficient for an award of attorney's fees. French v. Sorensen, 113 Idaho 950, 751 P.2d 98 (1988), overruled on other grounds, Cardenas v. Kurpjuweit, 116 Idaho 739, 779 P.2d 414 (1989).

Where, in a personal injury action, the plaintiffs prevailed on the compensatory damage claim, but the defendant prevailed on the claims for loss of consortium and punitive damages, the judge's decision that there was no overall prevailing party was not an abuse of discretion. Ruge v. Posey, 114 Idaho 890, 761 P.2d 1242 (Ct. App. 1988).

An award of attorney's fees may be granted under this section and Idaho App. R. 41 on appeal to the prevailing party. Such an award is appropriate when the court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably or without foundation. Excel Leasing Co. v. Christensen, 115 Idaho 708, 769 P.2d 585 (Ct. App. 1989).

While it is true that the district court did not provide relief to petitioner on every issue raised in her petition, she did prevail with regard to the contention upon which she went before the district court, and, after that proceeding, the district court specifically held that the department of correction had violated the notice requirements for a hearing on a disciplinary offense report and instructed the department to remove that report from petitioner's records; by requiring the removal of the report from petitioner's records, the district court granted petitioner the relief toward which the several issues were directed, and on this basis, she genuinely was the prevailing party. Needs v. State, 118 Idaho 207, 795 P.2d 912 (Ct. App. 1990).

Where neither party prevailed in appeal involving a divorce action, no costs or attorney's fees were awarded. Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991).

Where church was awarded an injunction against pastor preventing pastor from conducting any church business and from coming onto church premises, and pastor was awarded damages in his countersuit for wrongful termination, pastor was not a prevailing party for purposes of attorney's fees under this section or § 12-120. Fellowship Tabernacle, Inc. v. Baker, 125 Idaho 261, 869 P.2d 578 (Ct. App. 1994).

Since county board of commissioners were not the prevailing party in appeal brought by county employee after his employment was terminated, they could not be awarded attorney's fees. Ockerman v. Ada County Bd. of Comm'rs, 130 Idaho 265, 939 P.2d 584 (Ct. App. 1997).

When the court of appeals reversed in part a trial court's grant of summary judgment, there was no longer a "prevailing party" who could be entitled to attorney's fees under this section, and further because the court of appeals had concluded that the plaintiff had raised a legitimate issue that could not be disposed of on summary judgment, this inherently overturned the district court's conclusion that the plaintiff's claim was pursued frivolously or without foundation. John W. Brown Props. v. Blaine County, 132 Idaho 60, 966 P.2d 656 (Ct. App. 1998).

The plaintiff was not entitled to costs on appeal where it was the prevailing party on appeal but only prevailed partially on cross-appeal. Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82, 982 P.2d 917 (1999).

Where a family's medical malpractice suit against a hospital and doctors was properly dismissed for failing to timely serve process, the family was not entitled to an award of attorney's fees on appeal, as they were not the prevailing party. Rudd v. Merritt (In re Estate of Rudd), 138 Idaho 526, 66 P.3d 230 (2003).

Even if § 12-120(3) or this section applied, the former member of a professional limited liability company was not the prevailing party and was not entitled to an award of attorney's fees where the appellate court vacated the judgment and where the member prevailed only in part on the appeal. Howard v. Perry, 141 Idaho 139, 106 P.3d 465 (2005).

Prevailing party is awarded attorney's fees on appeal under this section when the appellate court believes that the appeal was brought or defended

frivolously, unreasonably, or without foundation. Fisk v. Royal Caribbean Cruises, 141 Idaho 290, 108 P.3d 990 (2005).

Where there was a genuine issue as to which of three possible creeks constituted a property line, summary judgment could not be granted, the purchasers of the property were not the prevailing parties, and they were not entitled to attorney's fees on appeal. Read v. Harvey, 141 Idaho 497, 112 P.3d 785 (2005).

Where a trial court erred in granting a city's petition for judicial confirmation to allow it to enter into an agreement for the expansion of its airport parking facilities, the city was not entitled to attorney's fees on appeal. However, because respondent prevailed on appeal against the city's petition for judicial confirmation, he was entitled to attorney's fees. City of Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006), overruled on other grounds, City of Challis v. Consent of the Governed Caucus, 159 Idaho 398, 361 P.3d 485 (2015).

Department of health and welfare and a social worker were not entitled to attorney's fees because they did not prevail on appeal, as summary judgment in their favor in a wrongful death action was reversed. Rees v. State, 143 Idaho 10, 137 P.3d 397 (2006).

Where two insureds did not prevail on appeal in a dispute regarding coverage under a title insurance policy, they were not entitled to recover attorney's fees. Point of Rocks Ranch, LLC v. Sun Valley Title Ins. Co., 143 Idaho 411, 146 P.3d 677 (2006).

District court did not abuse its discretion by failing to award the surgeon costs and attorney fees after the first medical malpractice trial ended with the jury being unable to reach a verdict, because the district court concluded that neither party prevailed after the first trial and that the patient's dismissed claim was not brought frivolously. Puckett v. Verska, 144 Idaho 161, 158 P.3d 937 (2007).

Property owners were denied attorney fees under § 12-117 and this section, where they lost on two of their three claims. Plaintiffs were not the prevailing party, and there was no indication that the state defended the claims against plaintiffs unreasonably or without foundation. Harris v. State Ex Rel. Kempthorne, 147 Idaho 401, 210 P.3d 86 (2009).

Where mother of a child who died after extended sedation with Propofol presented evidence through an expert witness regarding the effects of that extended use, and this evidence was clearly influential in producing a jury verdict in favor of the mother, the trial court erred in rejecting that evidence and in entering a j.n.o.v. in favor of the child's doctors, who were not entitled to attorney fees on appeal because they did not prevail. Coombs v. Curnow, 148 Idaho 129, 219 P.3d 453 (2009).

Since each claim in an action must be resolved before a court may determine the prevailing party, the identity of the prevailing party cannot be known until proceedings at the trial level are complete. Steel Farms, Inc. v. Croft & Reed, Inc., 154 Idaho 259, 297 P.3d 222 (2012).

When deciding if an airplane owner was entitled to attorney fees against the airplane's possessors, it was not error to find the owner was the prevailing party because (1) the main issue of possession was decided in the owner's favor, (2) it was not an abuse of discretion to weigh the possessors' invalid lien, and (3) the owner defeated the possessors' counterclaims. Idaho Military Historical Soc'y, Inc. v. Maslen, 156 Idaho 624, 329 P.3d 1072 (2014).

It is not a matter of law that a plaintiff who recovers more than a nominal amount on its claim and defeats a counterclaim is the prevailing party in the litigation, for purposes of an award of attorney fees and costs Am. Semiconductor, Inc. v. Sage Silicon Solutions, LLC, 162 Idaho 119, 395 P.3d 338 (2017).

Private Attorney General Actions.

Attorney's fees are to be awarded only where they are authorized by statute or contract. Since this section provides the trial court, with discretion, to award fees to the prevailing party, there is a statutory basis and the question then becomes whether the Idaho R. Civ. P. 54(e)(1) limitation, restricting the award to those cases which are "defended frivolously, unreasonably, or without foundation," is applicable. Where the award of attorney's fees is under the private attorney general doctrine, the limitation does not apply. Hellar v. Cenarrusa, 106 Idaho 571, 682 P.2d 524 (1984).

There is a three-factor test to determine the right to attorney's fees under the private attorney general doctrine: (1) the strength or societal importance of the public policy vindicated by the litigation; (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff; and (3) the number of people standing to benefit from the decision. State v. Hagerman Water Right Owners, Inc., 130 Idaho 718, 947 P.2d 391 (1997).

The private attorney general doctrine arises from the authority in this section for a court to award attorney's fees to a prevailing party. State v. Hagerman Water Right Owners, Inc., 130 Idaho 718, 947 P.2d 391 (1997).

The private attorney general doctrine is limited to cases brought by public interest litigants represented by private attorneys acting pro bono publico or members of public interest firms. Thus, if the plaintiff is protecting its own economic interests, it cannot claim that it is a public interest litigant. It is not enough that action results in benefits to the public; it must be pursued with the purpose of benefiting the public. State v. Hagerman Water Right Owners, Inc., 130 Idaho 718, 947 P.2d 391 (1997).

Products Liability Action.

A retail seller could not recover its attorney's fees and costs, which it incurred defending itself in a products liability action, from the manufacturer of the allegedly defective product on an indemnification theory, where only the manufacturer was required to pay damages and the retail seller was not found to be liable. Weston v. Globe Slicing Mach. Co., 621 F.2d 344 (9th Cir. 1980).

Proper Defense.

Where, in an action to correct a faulty description of land sold by the plaintiff to the defendant and to revoke an option to purchase more land previously granted, the defendant was legally entitled to refuse the request to give up his option to purchase the plaintiff's real estate, the plaintiff was properly denied attorney's fees. McLaughlin v. Robinson, 103 Idaho 211, 646 P.2d 453 (Ct. App. 1982).

Where widow was not entitled to such statutory rights as are provided for the benefit of surviving spouses because the slayer's statute was applicable, the widow's claims were properly contested by the personal representative,

and widow was not entitled to recover attorney's fees. Eliasen v. Fitzgerald, 105 Idaho 234, 668 P.2d 110 (1983).

In determining whether to award costs and attorney's fees when procedural defenses raise genuine questions concerning the court's jurisdiction or the propriety of granting relief upon the record then before the court, such defenses cannot be deemed frivolous, unreasonable or without foundation. Camp v. Jiminez, 107 Idaho 878, 693 P.2d 1080 (Ct. App. 1984).

The court of appeals could not say with certainty that the "total defense" presented by husband was unreasonable, frivolous or without foundation. Such a finding could only be made taking into account the entire course of the litigation. Accordingly, the court of appeals vacated that part of the fee award which was based solely upon this section. DesFosses v. DesFosses, 122 Idaho 634, 836 P.2d 1095 (Ct. App. 1992).

In an action by interstate carriers against the Idaho public utilities commission challenging registration renewal fees as excessively high, attorney's fees were not awarded where the court made no findings that the commission defended the action frivolously, unreasonably or without foundation; there were difficult and complex constitutional issues presented. Owner-Operator Indep. Drivers Ass'n v. Idaho Pub. Utils. Comm'n, 125 Idaho 401, 871 P.2d 818 (1994), modified on other grounds, Roe v. Harris, 128 Idaho 569, 917 P.2d 403 (1996).

Quiet Title Action.

Where plaintiffs had benefit of court decision, released over two years before they brought their action to quiet title, concerning the essential elements and controlling law regarding the doctrine of boundary by agreement; the case law made it clear that two points in their complaint — payment of taxes and failure to actively use land — were not material elements in the doctrine of boundary by agreement; and fence in question had been in place since 1929 and considered the boundary until 1990, award of attorney's fees to the opposing party for pursuit of an unreasonable action was upheld. Cameron v. Neal, 130 Idaho 898, 950 P.2d 1237 (1997).

Remand.

Attorney fees were not awarded on appeal in a case involving a permit for a livestock confinement because there was a remand of the case for further action. Halper v. Jerome County, 143 Idaho 691, 152 P.3d 562 (2007).

Representation Provided by Insurance Company.

The fact that defendants were represented by insurance companies and, thus, did not personally incur attorney's fees did not preclude an award of attorney's fees to the defendants pursuant to this section. Brown v. Matthews Mortuary, Inc., 118 Idaho 830, 801 P.2d 37 (1990).

Sanctions.

The court awarded $16,000 for attorney's fees earned by wife's counsel on her claim to establish husband's ownership of apartments. The primary basis for this award was to impose sanctions against husband under Idaho R. Civ. P. 37(c) for his unreasonable refusal to admit the truth of facts requested for his other attempts to prevent wife from obtaining evidence of husband's ownership of the apartments. The award of fees for this purpose were not dependent upon this section, and, thus, these awards did not need to await the final outcome of the case. DesFosses v. DesFosses, 122 Idaho 634, 836 P.2d 1095 (Ct. App. 1992).

— Distinguished.

The reasons for which attorney's fees may be awarded pursuant to this section and Idaho R. Civ. P. 54(e)(1) are not reasons that will support an award of sanctions pursuant to Idaho R. Civ. P. 11(a)(1). Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 803 P.2d 993 (1991).

Special Masters.

State was not entitled to a writ of prohibition to enjoin a district court from assessing fees for a special master against the state because the appointment of special masters and the assessment of special master costs were matters within the discretion of the district courts. Clear statutory authority existed for the award of such fees, as well direction as to how costs awarded against the state were to be paid. State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

State Agency.

Section 12-117(1) is not the exclusive basis upon which to seek an award of attorney fees against a state agency or political subdivision, as attorney fees may be awarded under any other statute that expressly applies to a state agency or political subdivision, such as § 12-120(3) or this section. Syringa Networks, LLC v. Idaho Dep't of Admin., 155 Idaho 55, 305 P.3d 499 (2013).

Supreme Court.

The statutory power to award attorney's fees applies to the members of the supreme court as well as to the district court judges throughout the state. Minich v. Gem State Developers, Inc., 99 Idaho 911, 591 P.2d 1078 (1979).

Where plaintiff was unprepared to proceed with proof on date of trial and on appeal failed to comply with a number of provisions of the Idaho Appellate Rules, supreme court of Idaho was justified in awarding attorney's fees to defendant on appeal under Idaho App. R. 41 and this section. Jensen v. Doherty, 101 Idaho 910, 623 P.2d 1287 (1981).

There is no authority for the award of attorney's fees against a worker's compensation claimant who unsuccessfully appeals to the supreme court of Idaho. Swanson v. Kraft, Inc., 116 Idaho 315, 775 P.2d 629 (1989).

Taxpayers' Action.

Where the district court was unable to ascertain with any degree of certainty the benefit allegedly bestowed upon the general public as a result of a taxpayer's action, but where it did find that a substantial benefit was bestowed upon the affected property owners, a paramount societal interest in the matter being litigated, one of the basic factors required for an award of attorney's fees under the private attorney general theory was missing. County of Ada v. Red Steer Drive-Ins of Nev., Inc., 101 Idaho 94, 609 P.2d 161 (1980).

A taxpayer's appeal to the district court is a civil action and, hence, within the purview of this section. Bogner v. State Dep't of Revenue & Taxation, 107 Idaho 854, 693 P.2d 1056 (1984).

A taxpayer can be awarded attorney's fees for costs incurred in pursuing an administrative remedy prior to instigating the very civil action which necessarily resulted when that effort failed. Bogner v. State Dep't of Revenue & Taxation, 107 Idaho 854, 693 P.2d 1056 (1984).

Where the tax commission has defended its case without foundation and unreasonably in misreading and misinterpreting §§ 63-3002 and 63-3022 to its advantage, it can be assessed attorney's fees under this section. Bogner v. State Dep't of Revenue & Taxation, 107 Idaho 854, 693 P.2d 1056 (1984).

Citizen lacked standing to challenge the cigarette tax since he had a "generalized grievance" shared by a large class of citizens, and his remedy was through the political process. Further, the sales and use tax bill originated in the Idaho House and although substantially amended in the Idaho Senate, it was constitutionally enacted; although the law was well settled that the Senate could amend a revenue bill, the appeal was not frivolous, so as to have justified an award of attorney's fees for the state. Gallagher v. State, 141 Idaho 665, 115 P.3d 756 (2005).

Tort Claims.

This section, which broadly authorizes a discretionary award of attorney's fees "in any civil case," could not be applied to case brought under Tort Claims Act since such case was governed by § 6-918A, which specifically relates to tort claims. Packard v. Joint Sch. Dist. No. 171, 104 Idaho 604, 661 P.2d 770 (Ct. App. 1983).

Plaintiff was not entitled to attorney's fees under § 41-1839, where a suit was not brought for the fire loss, but rather for the defendant's negligence in settling that fire loss within a reasonable time, therefore § 41-1839 was inapplicable; instead, to award attorney's fees not would involve this section and Idaho R. Civ. P. 54(e)(1). Reynolds v. American Hdwe. Mut. Ins. Co., 115 Idaho 362, 766 P.2d 1243 (1988).

Treble Damages.

To allow attorney's fees where respondent's damages have already been trebled would constitute an unreasonable windfall to respondent and would punish appellant too harshly. Rodwell v. Serendipity, Inc., 99 Idaho 894, 591 P.2d 141 (1979).

Unemployment Benefits.

Because this section only pertains to civil actions which are commenced by the filing of a complaint and a claim for unemployment benefits is not such an action, claimant's request for attorney's fees on appeal was inappropriate. Scrivner v. Service IDA Corp., 126 Idaho 954, 895 P.2d 555

(1995); Chapman v. NYK Line North America, Inc., 147 Idaho 178, 207 P.3d 154 (2009).

Where unemployment claimant prevailed before industrial commission regarding her claim for benefits, fundamental fairness did not entitle her to award of attorney's fees as a claim for unemployment benefits is not a civil action commenced by the filing of a complaint, and, as such, attorney's fees cannot be awarded under this section. Reedy v. M.H. King Co., 128 Idaho 896, 920 P.2d 915 (1996).

Untimely Appeal.

Trial court did not err in awarding attorney's fees to wife when husband's appeal of contempt order was clearly untimely. Callaghan v. Callaghan, 142 Idaho 185, 125 P.3d 1061 (2005).

Voluntary Dismissal.

A party's voluntary dismissal of a cause of action does not establish that a valid defense to the claim existed or was asserted. United States Nat'l Bank v. Cox, 126 Idaho 733, 889 P.2d 1123 (Ct. App. 1995).

Waiver.

In the absence of a showing in the record that defendants agreed not to assert the argument that plaintiffs waived the right to object to costs and attorney's fees by failing to timely object, the language of Idaho R. Civ. P. 54(d)(6) that failure to object in ten days to the items in the memorandum of cost constitutes a waiver of all objections to the costs claimed controls. Conner v. Dake, 103 Idaho 761, 653 P.2d 1173 (1982).

Where the record reflected that no objection was ever filed to defendants' memorandum of cost, as required by Idaho R. Civ. P. 54(d)(6), plaintiffs waived their right to further contest an award of attorney's fees. Conner v. Dake, 103 Idaho 761, 653 P.2d 1173 (1982).

Where the plaintiff unions did not file any objection within ten days to any of the items listed in the memorandum of costs filed by the prevailing defendant employer, the unions waived their right to contest the amount of attorney's fees listed in the memorandum. Operating Eng'rs Local Union 370 v. Goodwin Constr. Co., 104 Idaho 83, 656 P.2d 144 (Ct. App. 1982).

Worker's Compensation.

Supreme court had no authority to award attorney's fees against the industrial special indemnity fund on appeal under this section and Idaho R. Civ. P. 54(e)(1), since case was not a civil action, but an appeal for a worker's compensation case; the legislation establishing the worker's compensation system in Idaho specifically abolishes all civil actions and civil causes of action for personal injuries suffered by workers in industrial and public work. Garcia v. J.R. Simplot Co., 115 Idaho 966, 772 P.2d 173 (1989), overruled on other grounds, Archer v. Bonners Ferry Datsun, 117 Idaho 166, 786 P.2d 557 (1990); Bradford v. Roche Moving & Storage, Inc., 147 Idaho 733, 215 P.3d 453 (2009).

Because the action was not "commenced" by the filing of a "complaint", but employer appealed an administrative ruling by the industrial commission, which is not "civil action" for purposes of this section, employer was not entitled to an award of attorney's fees under this section. Northwest Pipeline Corp. v. State, Dep't of Emp., 129 Idaho 548, 928 P.2d 898 (1996).

This section did not provide authority for an award of attorney's fees on appeals from administrative agency rulings, but an award of costs was appropriate. Curtis v. M. H. King Co., 142 Idaho 383, 128 P.3d 920 (2005).

Employer was denied attorney fees on appeal, because this section does not apply to worker's compensation appeals. Oliveros v. Rule Steel Tanks, Inc., — Idaho —, 438 P.3d 291 (2019).

Yielding to § 6-918A.

This section contains no express and specific language providing an exception to the exclusive scope of § 6-918A. Therefore, this section yields to § 6-918A in tort claim cases. Kent v. Pence, 116 Idaho 22, 773 P.2d 290 (Ct. App. 1989).

Zoning Matters.

Where a case was initiated when corporation filed an application with the city's planning and zoning commission, and the case was later brought into district court through the process of review, no complaint was ever filed with a state court, and this section did not apply. World Cup Ski Shop, Inc. v. City of Ketchum, 118 Idaho 294, 796 P.2d 171 (Ct. App. 1990).

Cited Meyer v. Skyline Mobile Homes, 99 Idaho 754, 589 P.2d 89 (1979); Levra v. National Union Fire Ins. Co., 99 Idaho 871, 590 P.2d 1017 (1979); State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979); Smith Elec., Inc. v. Crandlemire, 100 Idaho 172, 595 P.2d 321 (1979); Wheeler v. McIntyre, 100 Idaho 286, 596 P.2d 798 (1979); Harbaugh v. Myron Harbaugh Motor, Inc., 100 Idaho 295, 597 P.2d 18 (1979); Potter v. Mulberry, 100 Idaho 429, 599 P.2d 1000 (1979); Large v. Mayes, 100 Idaho 450, 600 P.2d 126 (1979); McNeil v. Gisler, 100 Idaho 693, 604 P.2d 707 (1979); Fouser v. Paige, 101 Idaho 294, 612 P.2d 137 (1980); Lewis v. Fletcher, 101 Idaho 530, 617 P.2d 834 (1980); Yacht Club Sales & Serv., Inc. v. First Nat'l Bank, 101 Idaho 852, 623 P.2d 464 (1980); Massey-Ferguson Credit Corp. v. Peterson, 102 Idaho 111, 626 P.2d 767 (1980); International Eng'g Co. v. Daum Indus., Inc., 102 Idaho 363, 630 P.2d 155 (1981); Makin v. Liddle, 102 Idaho 705, 639 P.2d 3 (1981); Idaho Power Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 744, 639 P.2d 442 (1981); White v. Rehn, 103 Idaho 1, 644 P.2d 323 (1982); Payette Farms Co. v. Conter, 103 Idaho 148, 645 P.2d 888 (1982); Bastian v. Albertson's, Inc., 102 Idaho 909, 643 P.2d 1079 (Ct. App. 1982); Duff v. Bonner Bldg. Supply, Inc., 103 Idaho 432, 649 P.2d 391 (Ct. App. 1982); Biggers v. Biggers, 103 Idaho 550, 650 P.2d 692 (1982); Andre v. Morrow, 106 Idaho 455, 680 P.2d 1355 (1984); Chenery v. Agri-Lines Corp., 106 Idaho 687, 682 P.2d 640 (Ct. App. 1984); Sigdestad v. Gold, 106 Idaho 693, 682 P.2d 646 (Ct. App. 1984); Ace Realty, Inc. v. Anderson, 106 Idaho 742, 682 P.2d 1289 (Ct. App. 1984); Smith v. Idaho Peterbilt, Inc., 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984); Wing v. Hulet, 106 Idaho 912, 684 P.2d 314 (Ct. App. 1984); Verbillis v. Dependable Appliance Co., 107 Idaho 335, 689 P.2d 227 (Ct. App. 1984); Goodwin v. Wulfenstein, 107 Idaho 492, 690 P.2d 947 (Ct. App. 1984); Argonaut Ins. Cos. v. Tri-West Constr. Co., 107 Idaho 643, 691 P.2d 1258 (Ct. App. 1984); Newman v. Associated Sys., 107 Idaho 922, 693 P.2d 1124 (Ct. App. 1985); Maxson v. Farmers Ins. of Idaho, Inc., 107 Idaho 1043, 695 P.2d 428 (Ct. App. 1985); Makin v. Liddle, 108 Idaho 67, 696 P.2d 918 (Ct. App. 1985); Miller Constr. Co. v. Stresstek, 108 Idaho 187, 697 P.2d 1201 (Ct. App. 1985); Laight v. Idaho First Nat'l Bank, 108 Idaho 211, 697 P.2d 1225 (Ct. App. 1985); Amlin v. Hamilton, 108 Idaho 320, 698 P.2d 838 (Ct. App. 1985); Jonasson v. Gibson, 108 Idaho 459, 700 P.2d 81 (Ct. App. 1985); Marriage v. Berriochoa, 108 Idaho 474, 700 P.2d 96 (Ct. App. 1985); Beall Pipe & Tank

Corp. v. Tumac Intermountain, Inc., 108 Idaho 487, 700 P.2d 109 (Ct. App. 1985); Nenoff v. Graham, 108 Idaho 550, 700 P.2d 953 (Ct. App. 1985); Nelson v. Wagner, 108 Idaho 570, 700 P.2d 973 (Ct. App. 1985); Price v. Aztec Ltd., 108 Idaho 674, 701 P.2d 294 (Ct. App. 1985); Craft Wall of Idaho, Inc. v. Stonebraker, 108 Idaho 704, 701 P.2d 324 (Ct. App. 1985); LaGrand Steel Prods. Co. v. A.S.C. Constructors, Inc., 108 Idaho 817, 702 P.2d 855 (Ct. App. 1985); Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985); State v. Araiza, 109 Idaho 188, 706 P.2d 77 (Ct. App. 1985); Kunzler v. Kunzler, 109 Idaho 350, 707 P.2d 461 (Ct. App. 1985); Tudor Eng'g Co. v. Mouw, 109 Idaho 573, 709 P.2d 146 (1985); Lindstrom v. District Bd. of Health, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985); Pringle v. Pringle, 109 Idaho 1026, 712 P.2d 727 (Ct. App. 1985); Golder v. Golder, 110 Idaho 57, 714 P.2d 26 (1986); Steelman v. Mallory, 110 Idaho 510, 716 P.2d 1282 (1986); Wefco, Inc. v. Monsanto Co., 111 Idaho 55, 720 P.2d 643 (Ct. App. 1986); Sherry v. Sherry, 111 Idaho 185, 722 P.2d 494 (Ct. App. 1986); Carter v. Rich, 111 Idaho 684, 726 P.2d 1135 (1986); Harms Mem. Hosp. v. Morton, 112 Idaho 129, 730 P.2d 1049 (Ct. App. 1986); Jones v. Whiteley, 112 Idaho 886, 736 P.2d 1340 (Ct. App. 1987); Etcheverry Sheep Co. v. J.R. Simplot Co., 113 Idaho 15, 740 P.2d 57 (1987); Gem State Homes, Inc. v. Idaho Dep't of Health & Welfare, 113 Idaho 23, 740 P.2d 65 (Ct. App. 1987); Nalen v. Jenkins, 113 Idaho 79, 741 P.2d 366 (Ct. App. 1987); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); Schoonover v. Bonner County, 113 Idaho 916, 750 P.2d 95 (1988); Idaho Fair Share v. Idaho Pub. Utils. Comm'n, 113 Idaho 959, 751 P.2d 107 (1988); Burrup v. Stanger, 114 Idaho 50, 753 P.2d 261 (Ct. App. 1988); Myers v. Vermaas, 114 Idaho 85, 753 P.2d 296 (Ct. App. 1988); Howard v. Blue Cross of Idaho Health Serv., Inc., 114 Idaho 485, 757 P.2d 1204 (Ct. App. 1988); M.T. Deaton & Co. v. Leibrock, 114 Idaho 614, 759 P.2d 905 (Ct. App. 1988); Chenery v. Agri-Lines Corp., 115 Idaho 281, 766 P.2d 751 (1988); Jennings v. Edmo, 115 Idaho 391, 766 P.2d 1272 (Ct. App. 1988); Jensen v. Westberg, 115 Idaho 1021, 772 P.2d 228 (Ct. App. 1988); Ortiz v. Reamy, 115 Idaho 1099, 772 P.2d 737 (Ct. App. 1989); Griggs v. Nash, 116 Idaho 228, 775 P.2d 120 (1989); Milliron v. Milliron, 116 Idaho 253, 775 P.2d 145 (Ct. App. 1989); Parsons v. Beebe, 116 Idaho 551, 777 P.2d 1224 (Ct. App. 1989); Chittenden & Eastman Co. v. Leasure, 116 Idaho 981, 783 P.2d 320 (Ct. App. 1989); Bell v. Golden Condor, Inc., 117 Idaho 21, 784 P.2d 351 (Ct. App. 1989); Cosgrove ex rel. Winfree v.

Merrell Dow Pharmaceuticals, Inc., 117 Idaho 470, 788 P.2d 1293 (1990); Kinsela v. State, Dep't of Fin., 117 Idaho 632, 790 P.2d 1388 (1990); Hoopes v. Bagley, 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990); Wells v. Williamson, 118 Idaho 37, 794 P.2d 626 (1990); Ramco v. H-K Contractors, 118 Idaho 108, 794 P.2d 1381 (1990); Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp., 118 Idaho 116, 794 P.2d 1389 (1990); Alpert v. Boise Water Corp., 118 Idaho 136, 795 P.2d 298 (1990); Stueve v. Northern Lights, Inc., 118 Idaho 422, 797 P.2d 130 (1990); Desfosses v. Desfosses, 120 Idaho 27, 813 P.2d 366 (Ct. App. 1991), aff'd, 122 Idaho 634, 836 P.2d 1095 (Ct. App 1992); Kukuruza v. Kukuruza, 120 Idaho 630, 818 P.2d 334 (Ct. App. 1991); Ellibee v. Ellibee, 121 Idaho 501, 826 P.2d 462 (1992); Treasure Valley Bank v. Butcher, 121 Idaho 534, 826 P.2d 492 (Ct. App. 1992); Fox v. Board of County Comm'rs, 121 Idaho 684, 827 P.2d 697 (1992); PFC, Inc. v. Rockland Tel. Co., 121 Idaho 1036, 829 P.2d 1385 (Ct. App. 1992); Curtis v. Canyon Hwy. Dist. No. 4, 122 Idaho 73, 831 P.2d 541 (1992); Idaho First Nat'l Bank v. LeMaster, 147 Bankr. 52 (Bankr. D. Idaho 1992); State ex rel. Johnson v. Niederer, 123 Idaho 282, 846 P.2d 933 (Ct. App. 1992); McCandless v. Carpenter, 123 Idaho 386, 848 P.2d 444 (Ct. App. 1993); Wulf v. Peralta, 123 Idaho 567, 850 P.2d 216 (Ct. App. 1993); Alcan Bldg. Prods. v. Peoples, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993); Higley v. Woodard, 124 Idaho 531, 861 P.2d 101 (Ct. App. 1993); McHugh v. McHugh, 124 Idaho 543, 861 P.2d 113 (Ct. App. 1993); St. Alphonsus Regional Medical Ctr., Ltd. v. Killeen, 124 Idaho 197, 858 P.2d 736 (1993); Automobile Club Ins. Co. v. Jackson, 124 Idaho 874, 865 P.2d 965 (1993); Suitts v. First Sec. Bank of Idaho, N.A., 125 Idaho 27, 867 P.2d 260 (Ct. App. 1993); Templeton v. Hogue, 125 Idaho 130, 867 P.2d 1004 (Ct. App. 1994); Flahiff Funeral Chapels, Inc. v. Roll, 125 Idaho 136, 867 P.2d 1010 (Ct. App. 1994); Mitchell v. Zilog, Inc., 125 Idaho 709, 874 P.2d 520 (1994); Central Paving Co. v. Idaho Tax Comm'n, 126 Idaho 174, 879 P.2d 1107 (1994); Keeven v. Estate of Keeven, 126 Idaho 290, 882 P.2d 457 (Ct. App. 1994); Dunnick v. Elder, 126 Idaho 308, 882 P.2d 475 (Ct. App. 1994); Bannock Bldg. Co. v. Sahlberg, 126 Idaho 545, 887 P.2d 1052 (1994); State v. Owen, 126 Idaho 871, 893 P.2d 818 (Ct. App. 1995); Western Stockgrowers Ass'n v. Edwards, 126 Idaho 939, 894 P.2d 172 (Ct. App. 1995); Weyyakin Ranch Property Owners' Ass'n v. City of Ketchum, 127 Idaho 327, 896 P.2d 327 (1995); Balderson v. Balderson, 127 Idaho 48, 896 P.2d 956 (1995); Sutheimer v. Stoltenberg, 127 Idaho 81, 896 P.2d 989

(Ct. App. 1995); Dunham v. Dunham, 128 Idaho 55, 910 P.2d 169 (Ct. App. 1994); Haley v. Clinton, 128 Idaho 123, 910 P.2d 795 (Ct. App. 1996); McCuskey v. Canyon County Comm'rs, 128 Idaho 213, 912 P.2d 100 (1996); Branson v. Higginson, 128 Idaho 274, 912 P.2d 642 (1996); Jahnke v. Mesa Equip., Inc., 128 Idaho 562, 916 P.2d 1287 (Ct. App. 1996); Angstman v. City of Boise, 128 Idaho 575, 917 P.2d 409 (Ct. App. 1996); Idaho Watersheds Project, Inc. v. State Bd. of Land Comm'rs, 128 Idaho 761, 918 P.2d 1206 (1996); Yoakum v. Hartford Fire Ins. Co., 129 Idaho 171, 923 P.2d 416 (1996); Hawks v. EPI Prods. USA, Inc., 129 Idaho 281, 923 P.2d 988 (1996); The Highlands, Inc. v. Hosac, 130 Idaho 67, 936 P.2d 1309 (1997); McKay v. Owens, 130 Idaho 148, 937 P.2d 1222 (1997); State ex rel. Smith v. Jardine, 130 Idaho 318, 940 P.2d 1137 (1997); Kolln v. Saint Luke's Reg'l Med. Ctr., 130 Idaho 323, 940 P.2d 1142 (1997); Price v. Payette County Bd. of County Comm'rs, 131 Idaho 426, 958 P.2d 583 (1998); Idaho State Tax Comm'n v. Beacom, 131 Idaho 569, 961 P.2d 660 (Ct. App. 1998); Weaver v. Searle Bros., 131 Idaho 610, 962 P.2d 381 (1998); Pines, Inc. v. Bossingham, 131 Idaho 714, 963 P.2d 397 (Ct. App. 1998); Pro Indiviso, Inc. v. Holding Trust, 131 Idaho 741, 963 P.2d 1178 (1998); Smith v. Smith, 131 Idaho 800, 964 P.2d 667 (Ct. App. 1998); Cunningham v. Waford, 131 Idaho 841, 965 P.2d 201 (Ct. App. 1998); Chapple v. Madison County Officials, 132 Idaho 76, 967 P.2d 278 (1998); Danz v. Lockhart, 132 Idaho 113, 967 P.2d 1075 (Ct. App. 1998); Walker v. Hollinger, 132 Idaho 172, 968 P.2d 661 (1998); West v. Sonke, 132 Idaho 133, 968 P.2d 228 (1998); Thomas v. Worthington, 132 Idaho 825, 979 P.2d 1183 (1999); Meyers v. Lott, 133 Idaho 846, 993 P.2d 609 (2000); Vanwassenhove v. Vanwassenhove, 134 Idaho 198, 998 P.2d 505 (Ct. App. 2000); Farnworth v. Ratliff, 134 Idaho 237, 999 P.2d 892 (2000); State ex rel. Industrial Comm'n v. Quick Transp., Inc., 134 Idaho 240, 999 P.2d 895 (2000); Daisy Mfg. Co. v. Paintball Sports, Inc., 134 Idaho 259, 999 P.2d 914 (Ct. App. 2000); Weaver v. Stafford, 134 Idaho 691, 8 P.3d 1234 (2000); Roberts v. Board of Trustees, 134 Idaho 890, 11 P.3d 1108 (2000); Stevens v. Stevens, 135 Idaho 224, 16 P.3d 900 (2000); Post v. Idaho Farmway, Inc., 135 Idaho 475, 20 P.3d 11 (2001); Priest v. Landon, 135 Idaho 898, 26 P.3d 1235 (Ct. App. 2001); Sheridan v. Saint Luke's Reg'l Med. Ctr., 135 Idaho 775, 25 P.3d 88 (2001); C & G, Inc. v. Rule, 135 Idaho 763, 25 P.3d 76 (2001); Noreen v. Price Dev. Co., 135 Idaho 816, 25 P.3d 129 (Ct. App. 2001); Sacred Heart Med. Ctr. v. Nez Perce County, 136

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Application and construction of state offer of judgment rule — Determining whether offeror is entitled to award. 2 A.L.R.6th 279.

§ 12-122. Attorney's fees in habeas corpus actions. — In any habeas corpus action brought by a state penitentiary or county jail inmate, the judge shall award reasonable attorney's fees to the respondent, if, in the judgment of the court, the habeas corpus action was brought frivolously by the petitioner.

In all habeas corpus actions which result in a denial or dismissal of a writ of habeas corpus, the court shall make a specific finding whether or not the habeas corpus action was brought frivolously by the petitioner.

For purposes of this section, "brought frivolously," shall mean that the petitioner petitioned the court for a writ of habeas corpus based upon claims which either had no basis in fact or, even if the factual allegations were true, they did not, as a matter of law, justify any relief to the petitioner; provided, however, that the court, in its discretion, may determine that the action was not brought frivolously when the action involves a material issue of law that has not been settled by statute or by supreme court decision in this state.

History.

I.C., § 12-122, as added by 1983, ch. 248, § 1, p. 669.

CASE NOTES

Award denied.

Award upheld.

Constitutionality.

Frivolousness.

Award Denied.

Defendant's appeal concerning probation violation charges from another jurisdiction involved material issues of law that had not heretofore been settled by statute or by decision of the Idaho supreme court. Thus, even if this section stood as authority to exercise discretion in determining whether to award attorney fees to the state on appeal, such an award should not have

been made under the present facts. Swain v. State, 122 Idaho 918, 841 P.2d 448 (Ct. App. 1992).

Magistrate and district court erred in awarding costs and attorney fees to respondents, Idaho commission of pardons and parole, commissioners, and hearing officer, as the inmate's petition may have had some valid points. Dopp v. Idaho Comm'n of Pardons & Parole, 139 Idaho 657, 84 P.3d 593 (Ct. App. 2004).

Award Upheld.

Where defendant inmate brought a writ of habeas corpus petition alleging that his due process rights were violated by the department of correction failure to provide him timely notice and to grant him a timely disciplinary hearing as provided by the department's manual, defendant failed to show any adverse impact of the delay or any violation of due process; accordingly, magistrate's award of attorney fees to the state was upheld. Waggoner v. State, 121 Idaho 758, 828 P.2d 321 (Ct. App. 1991).

Constitutionality.

Where prisoner raised the issue of the constitutionality of this section on appeal, but failed to provide court with argument or authority in support of issue, court would not address issue. Banks v. State, 128 Idaho 886, 920 P.2d 905 (1996).

Frivolousness.

Where questions of law are raised, the nonprevailing party's position is not automatically frivolous simply because the court is unpersuaded; rather, the test is whether the nonprevailing party's position is plainly fallacious and, therefore, not fairly debatable; where a magistrate held that a habeas corpus petition was frivolous because it was dismissed for failure to state a claim upon which relief could be granted, this was error. Werlinger v. State, 117 Idaho 47, 785 P.2d 172 (Ct. App. 1990).

Petition for habeas corpus alleging petitioner was denied adequate medical treatment had a basis in fact at the time it was filed where before the petition was filed, petitioner complained that lesion on his leg caused pain, itchiness and discomfort, and he insisted on being examined by a physician; however, it was not until after the petition had been filed that he was able to have the lesion examined by a doctor and petitioner's request

for a second medical opinion did not occur until the close of the evidentiary hearing; prior to that time, he was still seeking medical assistance from the prison's medical staff; because petitioner did obtain some of the relief which he requested, the petition had a basis in fact at the time it was filed; moreover, since petitioner's initial request to see a physician may indeed have been justified under the circumstances and his need for a second medical opinion raised a material issue of law that was fairly debatable and which had not yet been settled by supreme court decision in this state, his petition was not brought frivolously and state was not entitled to attorney's fees. Vannatter v. State, 119 Idaho 507, 808 P.2d 426 (Ct. App. 1991).

There is no language in this section prohibiting the state from asserting its claim for fees on appeal independent from a request for attorney fees for defending a frivolous action in the lower court. The determinative question on appeal under this section is not whether the habeas corpus action brought by defendant presented frivolous matters or issues to the magistrate's court, but whether the subsequent appeal which was taken from the magistrate's decision was frivolous. Swain v. State, 122 Idaho 918, 841 P.2d 448 (Ct. App. 1992).

The prisoner did not bring the action and appeal frivolously, since the action involved a material issue regarding prison discipline that had not been settled by statute or supreme court decision in Idaho, and the state was denied attorney fees. Schevers v. State, 129 Idaho 573, 930 P.2d 603 (1996).

Cited Sanchez v. Arave, 120 Idaho 321, 815 P.2d 1061 (1991).

RESEARCH REFERENCES

Idaho Law Review. — Attorney Fee Awards in Idaho: A Handbook, Comment. 52 Idaho L. Rev. 583 (2016).

§ 12-123. Sanctions for frivolous conduct in a civil case. — (1) As used in this section:

(a) "Conduct" means filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.

(b) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action;

(ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(2)(a) In accordance with the provisions of this section, at any time prior to the commencement of the trial in a civil action or within twenty-one (21) days after the entry of judgment in a civil action, the court may award reasonable attorney's fees to any party to that action adversely affected by frivolous conduct.

(b) An award of reasonable attorney's fees may be made by the court upon the motion of a party to a civil action, but only after the court does the following:

(i) Sets a date for a hearing to determine whether particular conduct was frivolous; and

(ii) Gives notice of the date of the hearing to each party or counsel of record who allegedly engaged in frivolous conduct and to each party allegedly adversely affected by frivolous conduct; and

(iii) Conducts the hearing to determine if the conduct was frivolous, whether any party was adversely affected by the conduct if it is found to be frivolous, and to determine if an award is to be made, the amount of that award. In connection with the hearing, the court may order each party who may be awarded reasonable attorney's fees and his counsel of record to submit to the court, for consideration in determining the

amount of any such award, an itemized list of the legal services necessitated by the alleged frivolous conduct, the time expended in rendering the services, and the attorney's fees associated with those services. Additionally, the court shall allow the parties and counsel of record involved to present any other relevant evidence at the hearing.

(c) The amount of an award that is made pursuant to this section shall not exceed the attorney's fees that were both reasonably incurred by a party and necessitated by the frivolous conduct.

(d) An award of reasonable attorney's fees pursuant to this section may be made against a party, his counsel of record, or both.

(3) An award of reasonable attorney's fees pursuant to this section does not affect or determine the amount of or the manner of computation of attorney's fees as between an attorney and the attorney's client.

(4) The provisions of this section do not affect or limit the application of any civil rule or another section of the Idaho Code to the extent that such a rule or section prohibits an award of attorney's fees or authorizes an award of attorney's fees in a specified manner, generally, or subject to limitations.

History.

I.C., § 12-123, as added by 1987, ch. 278, § 8, p. 571.

STATUTORY NOTES

Compiler's Notes.

Section 18 of S.L. 1987, ch. 278 read: "The provisions of this act shall take effect on July 1, 1987, provided however, that Section [Sections] 1 through 11 shall apply only to causes of action which accrue on and after July 1, 1987. Provided further, that Section 6-1603, Idaho Code as enacted herein, is hereby repealed and does sunset for causes of action which accrue after June 30, 1992."

Section 19 of S.L. 1987, ch. 278 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

CASE NOTES

Award not proper.

Effective date.

Independent action.

Insurance action.

Prevailing party.

Workers' compensation proceedings.

Award Not Proper.

Plaintiffs' legal argument was not so plainly fallacious as to be deemed frivolous, nor was their case not supported by a good faith argument for the extension or modification of the law in Idaho, whether under § 12-121 or this section; accordingly, the trial court's award of attorney fees under either this section or § 12-121 and Idaho R. Civ. P. 54(e)(1), was not appropriate. Hanf v. Syringa Realty, Inc., 120 Idaho 364, 816 P.2d 320 (1991).

District court abused its discretion in dismissing law partner from a malpractice claim against legal partnership and, thus, incorrectly awarded attorney fees to the dismissed partner. Webster v. Hoopers, 126 Idaho 96, 878 P.2d 795 (Ct. App. 1994).

District court did not err in denying an award of attorney fees pursuant to this section, which was found to be inapplicable, as case could not be considered frivolous where challenged statutes providing for foreclosure were held unconstitutional. Dufur v. Nampa & Meridian Irrigation Dist., 128 Idaho 319, 912 P.2d 687 (Ct. App. 1996).

The plaintiffs' requested attorney fees resulting from the defense of appeal, arguing that the appeal was frivolous, presented no bona fide arguments and advanced no authority. The plaintiffs did not identify any particular conduct or arguments that they deemed frivolous or unmeritorious, and, on the contrary, the defendants asserted issues that deserved determination on appeal. Thus, there was no basis for an award of attorney's fees to the plaintiffs. Hughes v. State, Dep't of Law Enforcement, 129 Idaho 558, 929 P.2d 120 (1996).

Because insureds were not entitled to an award of attorney fees on an equitable basis, but were limited to exclusive statutory provisions regarding insurance coverage disputes, they were precluded from seeking an award for the cost of defending insurer's declaratory judgment suit under general fee statutes or the fee provisions of the uniform declaratory judgment statute. Allstate Ins. Co. v. Mocaby, 133 Idaho 593, 990 P.2d 1204 (1999).

Where the court awarded attorney fees as a sanction for frivolous or unreasonable conduct, because none of the required procedures for an award of attorney fees as a sanction under this section had taken place, the fee award under § 12-121 was improper. Roe Family Servs. v. Doe (In re Baby Boy Doe), 139 Idaho 930, 88 P.3d 749 (2004).

The district court did not err in denying the company an award of attorney fees in the wife's action claiming that the company was obligated to make a cash payment to her for her community property interest in the 80 shares of stock that the husband held in the company pursuant to this section and Idaho R. Civ. P. 11 because Idaho R. Civ. P. 11(a)(1) was not a basis for an overall award of attorney fees and the same analysis was applicable to claims based on § 12-121 and Idaho R. Civ. P. 54(e); further, given the district court's analysis under § 12-121, the same result would follow under Idaho R. Civ. P. 11(a)(1) and this section if they were applicable. Tolley v. THI Co., 140 Idaho 253, 92 P.3d 503 (2004).

Insurer sought attorney fees in declaratory judgment matter brought by the insurer to determine its duty to defend an investment company, its insured, in the underlying suit. The argument advanced by the investment company that the complaint should be broadly construed to encompass non-excluded claims was not frivolous. AMCO Ins. Co. v. Tri-Spur Inv. Co., 140 Idaho 733, 101 P.3d 226 (2004).

This section sanctioned frivolous conduct designed to harass or maliciously injure another party in a civil case; respondents were non-parties to the developers arbitration award and, thus, ineligible for attorney fees under the statute. Campbell v. Kildew, 141 Idaho 640, 115 P.3d 731 (2005).

Trust beneficiary's request for attorney's fees was denied because she did not follow the required procedure of making a motion and having a hearing in the trial court within 21 days after the entry of judgment, and there is no

provision for awarding attorney's fees on appeal. Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009).

Effective Date.

Where the action both accrued and was filed in the district court prior to July 1, 1987, this section by its terms was inapplicable. Hanf v. Syringa Realty, Inc., 120 Idaho 364, 816 P.2d 320 (1991).

Independent Action.

Where sister attempted to probate her mother's alleged holographic will, and then later withdrew it, it was undisputed that brother could have sought attorney fees in the probate proceedings as a result of the sister's conduct, but brother could not initiate an independent action to recover those attorney fees. Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008).

Insurance Action.

This section and § 41-1839 are the exclusive remedies for obtaining attorney fees in insurance disputes. The award of fees was proper where the insured never raised any triable issues of fact and did not attempt to offer any factual evidence to support his claims that the title company acted without diligence or in bad faith when it sought to obtain for him an ownership interest in an access road, even though he demanded that the title company do something to ensure he had an easement there. Mortensen v. Stewart Title Guar. Co., 149 Idaho 437, 235 P.3d 387 (2010).

Prevailing Party.

District court did not abuse its discretion by failing to award the surgeon costs and attorney fees after the first medical malpractice trial ended with the jury being unable to reach a verdict because the district court concluded that neither party prevailed after the first trial and that the patient's dismissed claim was not brought frivolously. Puckett v. Verska, 144 Idaho 161, 158 P.3d 937 (2007).

Workers' Compensation Proceedings.

This section is a civil statute and does not apply to workers' compensation proceedings. Quintero v. Pillsbury Co., 119 Idaho 918, 811 P.2d 843 (1991), superseded on other grounds, Seward v. Pac. Hide & Fur Depot, 138 Idaho 509, 65 P.3d 531 (2003).

Cited Pocatello Auto Color, Inc. v. Akzo Coatings, Inc., 127 Idaho 41, 896 P.2d 949 (1995); Folks v. Moscow Sch. Dist. No. 281, 129 Idaho 833, 933 P.2d 642 (1997); Hoyle v. Utica Mut. Ins. Co., 137 Idaho 367, 48 P.3d 1256 (2002); Doe v. Roe (In re Doe), 142 Idaho 202, 127 P.3d 105 (2005); Carter v. Carter (In re Carter JJC Trust), 143 Idaho 373, 146 P.3d 639 (2006); Youngblood v. Higbee, 145 Idaho 665, 182 P.3d 1199 (2008); Bird v. Bidwell, 147 Idaho 350, 209 P.3d 647 (2009); Vreeken v. Lockwood Eng'g, B.V., 148 Idaho 89, 218 P.3d 1150 (2009); Berkshire Invs., LLC v. Taylor, 153 Idaho 73, 278 P.3d 943 (2012); Tapadeera, LLC v. Knowlton, 153 Idaho 182, 280 P.3d 685 (2012); Markin v. Grohmann, 153 Idaho 223, 280 P.3d 726 (2012); Lincoln Land Co., LLC v. LP Broadband, Inc., 163 Idaho 105, 408 P.3d 465 (2017).

RESEARCH REFERENCES

Idaho Law Review. — Attorney Fee Awards in Idaho: A Handbook, Comment. 52 Idaho L. Rev. 583 (2016).

ALR. — Validity, construction, and application of state vexatious litigant statutes. 45 A.L.R.6th 493.

Idaho Code Ch. 2

Chapter 2
PROCEEDINGS AGAINST JOINT DEBTORS

Sec.

12-201 — 12-206. [Repealed.]

§ 12-201 — 12-206. Proceedings against joint debtors — Pleadings — Trial and verdict. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 672-677; R.S., R.C., & C.L. §§ 4860-4865; C.S., §§ 7186-7191; I.C.A., §§ 12-201 — 12-206, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

Idaho Code Ch. 3

Chapter 3
INTEREST ON OFFERS OF SETTLEMENT

Sec.

12-301. Interest on offers of settlement.

12-302. Effect on civil rules.

12-303. Short title.

§ 12-301. Interest on offers of settlement. — (a) After commencement of any civil action based upon a claim for relief arising in tort, from property damage, personal injury or wrongful death, any claimant may at any time, no later than ten (10) days before the trial, serve upon an adverse party, a written offer of settlement, offering to settle his claim in such action and to stipulate to a judgment for a sum certain, including any attorney fees allowable by law and costs of litigation then accrued.

(b) If the adverse party, at any time after service of such offer of settlement and prior to its revocation, serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered for the amount of the offer. In the event that an offer of settlement is revoked by a claimant or not accepted, evidence of the offer is not admissible except in a proceeding to determine costs or to award interest pursuant to this section.

(c) If such offer of settlement is not accepted prior to trial pursuant to subsection (b) above, and the action reaches a final judgment by the court after trial, the court shall inquire as to whether any prevailing claimant made an offer of settlement, pursuant to subsection (a) of this section, which an adverse party failed to accept. If the court finds that such claimant has recovered an amount equal to or greater than his offer of settlement, the court shall add to the judgment, annual interest on the amount contained in such offer, computed from the date that the offer of settlement was served and shall enter judgment accordingly. For purposes of such computation, the last offer of settlement which was equal to or less than the damages awarded such claimant, together with the costs and attorney fees, if any, awarded to him shall be used. A subsequent offer made pursuant to subsection (a) revokes any previous offer.

(d) For purposes of this section, "annual interest" shall mean the rate specified in section 28-22-104(2), Idaho Code.

History.

I.C., § 12-301, as added by 1987, ch. 278, § 11, p. 571.

STATUTORY NOTES

Compiler's Notes.

Section 18 of S.L. 1987, ch. 278 read: "The provisions of this act shall take effect on July 1, 1987, provided however, that Section [Sections] 1 through 11 shall apply only to causes of action which accrue on and after July 1, 1987. Provided further, that Section 6-1603, Idaho Code, as enacted herein, is hereby repealed and does sunset for causes of action which accrue after June 30, 1992."

CASE NOTES

Examples.

In plaintiff's personal injury suit for damages, where she won a more favorable verdict from the jury than defendant's settlement offer, plaintiff was entitled to prejudgment interest on the settlement offer award computed from the date the offer of settlement was served. Dyet v. McKinley, 139 Idaho 526, 81 P.3d 1236 (2003), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Cited Van Brunt v. Stoddard, 136 Idaho 681, 39 P.3d 621 (2001).

§ 12-302. Effect on civil rules. — This chapter shall not amend rule 68 of the Idaho rules of civil procedure.

History.

I.C., § 12-302, as added by 1987, ch. 278, § 11, p. 571.

STATUTORY NOTES

Compiler's Notes.

Section 18 of S.L. 1987, ch. 278 read: "The provisions of this act shall take effect on July 1, 1987, provided however, that Section [Sections] 1 through 11 shall apply only to causes of action which accrue on and after July 1, 1987. Provided further, that Section 6-1603, Idaho Code, as enacted herein, is hereby repealed and does sunset for causes of action which accrue after June 30, 1992."

§ 12-303. Short title. — This chapter shall be known as the "Interest on Offers of Settlement."

History.

I.C., § 12-303, as added by 1987, ch. 278, § 11, p. 571.

STATUTORY NOTES

Compiler's Notes.

Section 19 of S.L. 1987, ch. 278 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 18 of S.L. 1987, ch. 278 read: "The provisions of this act shall take effect on July 1, 1987, provided however, that Section [Sections] 1 through 11 shall apply only to causes of action which accrue on and after July 1, 1987. Provided further, that Section 6-1603, Idaho Code, as enacted herein, is hereby repealed and does sunset for causes of action which accrue after June 30, 1992."

Idaho Code Ch. 4

Chapter 4
MOTIONS AND ORDERS

Sec.

12-401 — 12-405. [Repealed.]

§ 12-401. Orders and motions, defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 680; R.S., R.C., & C.L., § 4880; C.S., § 7194; I.C.A., § 12-401, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 7(b)(1), 12(b).

§ 12-402. Motions and orders — Where made. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 681; R.S., R.C., & C.L., § 4881; C.S., § 7195; I.C.A., § 12-402, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 7(b)(1).

§ 12-403. Notice of motion. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 682; R.S., R.C., & C.L., § 4882; C.S., § 7196; I.C.A., § 12-403, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 6(d), 6(e)(1).

§ 12-404. Continuance and transfer of motion. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 683; R.S., R.C., & C.L., § 4883; C.S., § 7197; I.C.A., § 12-404, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-405. Orders for payment of money — Enforcement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 684; R.S., R.C., & C.L., § 4884; C.S., § 7198; I.C.A., § 12-405, was repealed by S.L. 1975, ch. 242, § 1.

Idaho Code Ch. 5

Chapter 5
SERVICE OF PAPERS, NOTICE AND APPEARANCE

Sec.

12-501 — 12-507. [Repealed.]

§ 12-501. Service of notice and papers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 685; R.S., R.C., & C.L., § 4889; C.S., § 7199; I.C.A., § 12-501, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 5(b).

§ 12-502, 12-503. Service by mail — When permitted — How made. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 686, 687; R.S., R.C., & C.L., §§ 4890, 4891; C.S., §§ 7200, 7201; am. 1929, ch. 86, § 1, p. 140; I.C.A., §§ 12-502, 12-503, were repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 5(b).

§ 12-504. Appearance. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 688; R.S., R.C., & C.L., § 4892; C.S., § 7202; I.C.A., § 12-504, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 4(i), 5(a), 7(c).

§ 12-505. Service on nonresident. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 689; R.S., R.C., & C.L., § 4893; C.S., § 7203; I.C.A., § 12-505, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rules, see Idaho Civil Procedure Rules 5(a), 5(b).

§ 12-506. Limitation on foregoing provisions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 690; R.S., R.C., & C.L., § 4894; C.S., § 7204; I.C.A., § 12-506, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 5(b).

§ 12-507. Service by telegraph. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 691; R.S., R.C., & C.L., § 4895; C.S., § 7205; I.C.A., § 12-507, was repealed by S.L. 1975, ch. 242, § 1. For present rules, see Idaho Civil Procedure Rules 4(c)(3), 4(g).

Chapter 6
GENERAL PROVISIONS

Sec.

12-601 — 12-611. [Repealed.]

12-612. Actions against sheriffs — Notice to indemnitors.

12-613. General form of undertaking.

12-614. Justification of sureties.

12-615. Parties not required to give bond.

12-616. Subrogation of sureties.

§ 12-601. Civil and criminal remedies not merged. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., R.C., & C.L., § 3801; C.S., § 6439; I.C.A., § 12-601, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-602. Lost papers — How supplied. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 710; R.S., R.C., & C.L., § 4923; C.S., § 7225; I.C.A., § 12-602, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 10(a)(2).

§ 12-603. Papers with defective titles — Validity. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 711; R.S., R.C., & C.L., § 4924; C.S., § 7226; I.C.A., § 12-603, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 61.

§ 12-604. Successive actions on same contract. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 712; R.S., R.C., & C.L., § 4925; C.S., § 7227; I.C.A., § 12-604, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-605. Consolidation of actions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 713; R.S., R.C., & C.L., § 4926; C.S., § 7228; I.C.A., § 12-605, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 42(a).

§ 12-606. Action, when deemed pending. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 714; R.S., R.C., & C.L., § 4927; C.S., § 7229; I.C.A., § 12-606, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 3(a).

§ 12-607. Actions to determine adverse claims and by sureties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 715; R.S., R.C., & C.L., § 4928; C.S., § 7230; I.C.A., § 12-607, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975. For present rule, see Idaho R. Civ. P. 57.

§ 12-608. Clerk to write testimony. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 716; R.S., R.C., & C.L., § 4929; C.S., § 7231; I.C.A., § 12-608, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-609. Register of actions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 717; R.S., R.C., & C.L., § 4930; C.S., § 7232; I.C.A., § 12-609, was repealed by S.L. 1975, ch. 242, § 1, effective March 31, 1975.

§ 12-610. Majority of referees may act. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 718; R.S., R.C., & C.L., § 4931; C.S., § 7233; I.C.A., § 12-610, was repealed by S.L. 1975, ch. 242, § 1 effective March 31, 1975.

§ 12-611. Extension of time. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised C.C.P. 1881, § 719; R.S., R.C., & C.L., § 4932; C.S., § 7234; I.C.A., § 12-611, was repealed by S.L. 1975, ch. 242, § 1. For present rule, see Idaho R. Civ. P. 6(b).

§ 12-612. Actions against sheriffs — Notice to indemnitors. — If an action is brought against a sheriff for an act done by virtue of his office, and he gives written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the court, or judge in vacation, may, on motion, upon notice of five (5) days, order judgment to be entered up against them for the amount so recovered, including costs.

History.

C.C.P. 1881, § 720; R.S., R.C., & C.L., § 4933; C.S., § 7235; I.C.A., § 12-612.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

§ 12-613. General form of undertaking. — Whenever a party to an action or proceeding desires to give an undertaking provided to be given by law, it shall be sufficient if the sureties sign an undertaking indicating that they are thereby bound to the obligations of the statute requiring the undertaking to be given. Such undertaking may be in form as follows:

(Title of court. Title of cause.)

Whereas, the .... desires to give an undertaking for (state what) ...., now, therefore, we the undersigned sureties, do hereby obligate ourselves jointly and severally, to (name who) .... under said statutory obligations in the sum of .... dollars.

The sureties so signing such undertaking are bound to the full statutory obligations of the statute requiring the undertaking.

History.

1895, p. 18, §§ 1-3; reen. 1899, p. 235, §§ 1-3; reen. R.C. & C.L., § 4933a; C.S., § 7236; I.C.A., § 12-613.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Dual appeals.

Sufficiency of undertaking.

Validity and application.

Dual Appeals.

Appellant may embrace more than one appeal in the same action in more than one undertaking conforming to this section. Aumock v. Kilborn, 52 Idaho 438, 16 P.2d 975 (1932).

Sufficiency of Undertaking.

Undertaking on attachment which recites that the "plff." desires to give undertaking and obligating sureties to "deft." is sufficient. Finney v. Moore, 9 Idaho 284, 74 P. 866 (1903).

When appeal is taken both from decree and order denying motion to reopen decree, and both are specifically referred to in undertaking on appeal, in form into which statute imports every condition required by law, and amount of penalty is sufficient for both appeals, legal effect is to comprise two bonds in one instrument, and it must be so construed. In re Blackinton's Estate, 29 Idaho 310, 158 P. 492 (1916).

Undertaking which substantially complies with statute is not objectionable because it fails to set out section number. Cupples v. Stanfield, 35 Idaho 466, 207 P. 326 (1922).

Undertaking being given on behalf of appellant, he is liable thereon, even though he did not sign it. Hoebel v. Utah-Idaho Livestock Loan Co., 39 Idaho 294, 227 P. 1048 (1924).

Where the undertaking in question specifically states that it is for an undertaking on appeal and the statutory obligations are entered into by the sureties, then the undertaking is sufficient to support the appeal from the probate court to the district court. Denman v. Martin, 79 Idaho 509, 321 P.2d 606 (1958).

Validity and Application.

This statute providing a form for undertakings in civil and criminal actions is constitutional. Smith v. Haner, 8 Idaho 370, 69 P. 109 (1902).

This section applies to appeals from probate court. In re Blackinton's Estate, 29 Idaho 310, 158 P. 492 (1916).

Cited Edminston v. Steele, 12 Idaho 613, 87 P. 677 (1906); Bain v. Olsen, 36 Idaho 130, 209 P. 721 (1922); Muncey v. Security Ins. Co., 42 Idaho 782, 247 P. 785 (1926).

§ 12-614. Justification of sureties. — In all cases where an undertaking, with sureties, is required by the provisions of this code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the state, and each are worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds $2000.00, and there are more than two (2) sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

History.

C.C.P. 1881, § 721; R.S., R.C., & C.L., § 4934; C.S., § 7237; I.C.A., § 12-614.

STATUTORY NOTES

Cross References.

Bonds of surety companies constitute a sufficient compliance with this section, § 41-2604.

Certificate of authority of surety company constitutes a sufficient justification of such company as surety. § 41-2605.

Proceedings for release of sureties from liability, § 41-2609.

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Effect on Validity of Undertaking.

Justification of sureties constitutes no part of undertaking, but undertaking is complete without it. Miller v. Pine Mining Co., 3 Idaho 603, 32 P. 207 (1893).

Bond is valid although affidavit fails to state that bondsmen are householders or freeholders. Wilson v. Eagleson, 9 Idaho 17, 71 P. 613 (1903).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Costs, § 61 et seq.

§ 12-615. Parties not required to give bond. — In any civil action or proceeding wherein the state or the people of the state is a party plaintiff, or any state officer, in his official capacity, or on behalf of the state, or any county or city, is a party plaintiff or defendant, no bond, written undertaking or security can be required of the state, or the people thereof, or any officer thereof, or any county or city; but on complying with the other provisions of this code the state, or the people thereof, or any state officer acting in his official capacity, or any county or city, have the same rights, remedies and benefits as if the bond, undertaking or security were given and approved as required by this code.

History.

C.C.P. 1881, § 722; R.S., R.C., & C.L., § 4935; C.S., § 7238; I.C.A., § 12-615.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

The references in this section to "this code" are to the Code of Civil Procedure, a division of the Idaho Code, consisting of Titles 1 through 13.

CASE NOTES

Application.

Construction.

Application.

This section applies to village organized under laws of this state governing organization of cities and villages. Trueman v. Village of St. Maries, 21 Idaho 632, 123 P. 508 (1912).

This section applies to a county treasurer and ex-officio tax collector, against whom an action is brought, on behalf of a rural high school district, to enjoin collection of a school tax; and, if judgment goes against the officer, he is not required to furnish an undertaking on appeal; in such case he is acting on behalf of a legal subdivision of state government and not as agent of a rural high school district. Coon v. Sommercamp, 26 Idaho 776, 146 P. 728 (1915).

County is relieved of necessity of filing undertaking with its notice of appeal by provisions of this section. Washington County v. Weiser Nat'l Bank, 43 Idaho 618, 253 P. 838 (1927).

This section is not applicable on appeal to supreme court from judgment of district court sustaining board of county commissioner's allowance of claims against county. Melquist v. Board of County Comm'rs, 45 Idaho 296, 261 P. 774 (1927).

Construction.

Whenever an action is brought by or against state officers and such officers prosecute or defend in said action in their official capacity, acting for or defending rights of state, or any legal subdivision thereof, they are permitted to so act without furnishing costs or undertakings on appeal. This same rule applies to all state, county, district, and municipal officers, while engaged in protecting the rights of people in courts. Coon v. Sommercamp, 26 Idaho 776, 146 P. 728 (1915).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Costs, § 61 et seq.

§ 12-616. Subrogation of sureties. — Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor and is entitled to control, enforce and satisfy such judgments in all respects as if he had recovered the same.

History.

C.C.P. 1881, § 723; R.S., R.C., & C.L., § 4936; C.S., § 8239; I.C.A., § 12-616.

STATUTORY NOTES

Compiler's Notes.

This section was made a rule of procedure and practice for the courts of Idaho by order of the supreme court promulgated March 19, 1951 which order was rescinded by order of the supreme court promulgated October 24, 1974, effective January 1, 1975.

CASE NOTES

Construction.

Debtor paid in full.

Money judgment.

Derivation of right of subrogation.

Doctrine not contractual.

Meaning of "subrogate."

Construction.

This section is declaratory of equitable rule that where judgment is paid by one collaterally liable as surety, he is subrogated to all rights and liens of creditor with same position of priority occupied by him. Agren v. Staker, 46 Idaho 36, 267 P. 460 (1928).

The plaintiff to whom a debtor executed a bill of sale of debtor's property which was subject to two prior liens of a bank, one being secured by a chattel mortgage and the other unsecured, and also taking an assignment of property under an agreement to pay the claims of the bank in full is not on a payment of the chattel mortgage debt entitled to be subrogated to the rights of the bank under the mortgage without paying the unsecured debt of the bank. Houghtelin v. Diehl, 47 Idaho 636, 277 P. 699 (1929).

Debtor Paid in Full.

The general and uniform rule is that a person cannot be subrogated to the rights or securities of the creditor until the claim of the creditor against the debtor has been paid in full. Houghtelin v. Diehl, 47 Idaho 636, 277 P. 699 (1929).

Money Judgment.

Deficiency judgment entered after the foreclosure sale is a money judgment within the meaning of this section. Great Am. Indem. Co. v. Bisbee, 59 Idaho 18, 79 P.2d 1037 (1938).

Derivation of Right of Subrogation.

The common law is indebted to the civil law for the doctrine of subrogation which was imported into the common-law courts by the aid of courts of equity, and so imported has been considered as a creature of equity and so administered so as to secure real and essential justice without regard to form; and it will not be allowed to operate in any case where so to do would work an injustice to others, as where it would disturb priorities of liens or defeat fixed rights of others. Houghtelin v. Diehl, 47 Idaho 636, 277 P. 699 (1929).

Doctrine Not Contractual.

The doctrine of subrogation does not rest on contract and no general rule can be laid down which will afford a sure test in all cases for its application; but whether the doctrine is applicable to any particular case depends on the peculiar facts and circumstances of such case. Houghtelin v. Diehl, 47 Idaho 636, 277 P. 699 (1929).

Meaning of "Subrogate."

"Subrogate" in its broadest sense is substitution of one person for another so that he may succeed to the rights of the creditor in respect to a debt or claim. Houghtelin v. Diehl, 47 Idaho 636, 277 P. 699 (1929).

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Title 13
APPEALS IN CIVIL ACTIONS

Chapter

Chapter 1. Appeals in General. [Repealed.]

Chapter 2. Appeals to Supreme Court From District Courts, §§ 13-201 — 13-204.

Chapter 1
APPEALS IN GENERAL

Sec.

13-101 — 13-103. [Repealed.]

§ 13-101 — 13-103. Judgments and orders appealable — Vacation of ex parte orders — Who may appeal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 639-641; R.S., R.C., & C.L., §§ 4800-4802; C.S., §§ 7149-7151; I.C.A., §§ 11-101 — 11-103, were repealed by S.L. 1977, ch. 170, § 4. For present law, see Idaho Appellate Rules.

Chapter 2
APPEALS TO SUPREME COURT FROM DISTRICT COURTS

Sec.

13-201. Civil judgments and orders appealable — Time for taking appeals.

13-202. Stay of proceedings pending appeal.

13-203. Record on appeal.

13-204 — 13-222. [Repealed.]

§ 13-201. Civil judgments and orders appealable — Time for taking appeals. — An appeal may be taken to the supreme court from a district court in any civil action by such parties from such orders and judgments, and within such times and in such manner as prescribed by rule of the supreme court.

History.

I.C., § 13-201, as added by 1977, ch. 170, § 6, p. 436.

STATUTORY NOTES

Cross References.

Appeal, election contest judgment, § 34-2025.

Appeal from order of board of county commissioners, § 31-1506.

Appeal from judgment on water power permit, § 42-203A.

Appeal, judgment of removal of civil officer, § 19-4113.

Appeals in criminal proceedings, § 19-2801 et seq.

Appellate jurisdiction confined to final decisions, § 1-204.

County reclamation projects, appeals, § 42-2805.

Costs on appeal, Idaho App. R. 40.

Disposition of appeals to supreme court, § 1-205.

Drainage districts, appeal from judgment assessing damages against, to be taken within thirty days from judgment, § 42-2924.

Fee of clerk of district court for comparing and certifying printed transcript on appeal, § 31-3201.

Fee of clerk of supreme court for filing petition for rehearing, § 1-402.

Garnishment proceedings, appeals in, § 8-522.

Tax matters, appeal, § 63-3801 et seq.

When judgment deemed entered, Idaho R. Civ. P. 58(a).

Prior Laws.

Former § 13-201 which comprised C.C.P. 1881, § 642; R.S., § 4807; am. 1895, p. 142, § 1; reen. 1899, p. 273, § 1; reen. R.C., § 4807; am. 1911, ch. 111, p. 367; am. 1915, ch. 80, § 1, p. 193; reen. C.L., § 4807; C.S., § 7152; I.C.A., § 11-201; am. 1957, ch. 105, § 1, p. 183 regarding judgment and rules appealable was repealed by S.L. 1977, ch. 170, § 5. See Idaho App. R. 1 et seq.

CASE NOTES

Appeal from partial judgment.

Appealable orders and judgments.

Nonappealable orders and judgments.

Time for taking appeal.

Appeal from Partial Judgment.

Where the court's decision on a motion for partial summary judgment did not amount to an adjudication of defendant's liability even though the court might ordinarily have to rule on the propositions involved after trial in reaching its ultimate conclusion of liability or nonliability, the decision did not serve as a final partial summary judgment such as is appealable to the Supreme Court. Twin Falls County v. Knievel, 98 Idaho 321, 563 P.2d 45 (1977).

Appealable Orders and Judgments.

An appeal may be taken from a judgment of contempt. Whittle v. Seehusen, 113 Idaho 852, 748 P.2d 1382 (Ct. App. 1987).

Nonappealable Orders and Judgments.

An order quashing service of summons is not an appealable order under this section. Silver Sage Ranch, Inc. v. Lawson, 98 Idaho 707, 571 P.2d 768 (1977).

Where in a declaratory judgment action brought by a fire insurer, the district court entered a partial summary judgment in favor of the insured, but the partial summary judgment fell short of fully adjudicating even one claim for relief requested under the insured's counterclaim, the partial

summary judgment was an interlocutory and nonappealable order. Glacier Gen. Assurance Co. v. Hisaw, 103 Idaho 605, 651 P.2d 539 (1982).

Time for Taking Appeal.

Where wife of counsel stated that she mailed a copy of the notice of appeal to opposing counsel 58 days after entry of the order appealed from, notice of appeal was timely served. Sines v. Blaser, 98 Idaho 435, 566 P.2d 758 (1977).

Cited Thompson v. Turner, 98 Idaho 110, 558 P.2d 1071 (1977); Stockwell v. State, 98 Idaho 797, 573 P.2d 116 (1977); Compton v. Compton, 101 Idaho 328, 612 P.2d 1175 (1980); Spencer v. Idaho First Nat'l Bank, 106 Idaho 316, 678 P.2d 108 (Ct. App. 1984); Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (Ct. App. 1987); Harper v. Harper, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Appellate Review, § 43 et seq.

C.J.S. — 4 C.J.S., Appeal & Error, §§ 93, 94.

§ 13-202. Stay of proceedings pending appeal. — (1) Upon and after an appeal of a judgment or order of the district court in a civil action, the judgment or order appealed from, or any other order or proceeding in the action may be stayed by the district court or the supreme court as provided by rule of the supreme court.

(2) If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal.

(3) If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

(4) The supersedeas bond or cash deposit requirements may also be waived in any action for good cause shown as provided by rule of the supreme court.

History.

I.C., § 13-202, as added by 1977, ch. 170, § 7, p. 436; am. 2003, ch. 122, § 4, p. 370.

STATUTORY NOTES

Cross References.

Stay during appeal, Idaho R. Civ. P. 83(i).

Stay pending appeal, Idaho App. R. 13.

Undertaking not required of state, state officer, county or city, § 12-615, Idaho R. Civ. P. Rule 62(e).

Prior Laws.

Former § 13-202 which comprised C.C.P. 1881, § 643; R.S., R.C., & C.L., § 4808; C.S., § 7153; I.C.A., § 11-202; am. 1943, ch. 21, § 1, p. 49 regarding mode of taking an appeal was repealed by S.L. 1977, ch. 170, § 5. See Idaho App. R. 13.

Compiler's Notes.

Section 5 of S.L. 2003, ch. 152 provides: "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 6 of S.L. 2003, ch. 122 provided: "This act shall be in full force and effect on and after July 1, 2003. Sections 1 through 3 of this act shall apply to all causes of action which accrue thereafter. Section 4 of this act shall apply to all cases in which an appeal is filed thereafter."

CASE NOTES

Reversal of final nonseverable judgment.

Timely service of notice.

Reversal of Final Nonseverable Judgment.

Where a part of a final nonseverable judgment is reversed, a final judgment is thereafter not present, leaving a trial judge positioned so that he can modify any prior orders or partial judgments that have been previously entered, assuming nonapplication of the doctrine of law of the case. Hutchins v. State, 100 Idaho 661, 603 P.2d 995 (1979).

Timely Service of Notice.

Where the wife of counsel stated that she mailed a copy of the notice of appeal to opposing counsel 58 days after entry of the order appealed from, such notice was timely served as required by this section. Sines v. Blaser, 98 Idaho 435, 566 P.2d 758 (1977).

§ 13-203. Record on appeal. — The clerk's record and reporter's transcript in an appeal of a civil action to the supreme court shall contain such portions and documents of the proceedings in the district court, and be prepared, processed and transmitted to the supreme court as provided by rule of the supreme court.

History.

I.C., § 13-203, as added by 1977, ch. 170, § 8, p. 436.

STATUTORY NOTES

Cross References.

Record, Idaho App. R. 24 to 31.

Prior Laws.

Former § 13-203 which comprised C.C.P. 1881, § 643; R.S., § 4809; am. 1907, p. 134, § 1; reen. R.C. & C.L., § 4809; C.S., § 7154; I.C.A., § 11-203, regarding undertaking on appeal, was repealed by S.L. 1977, ch. 170, § 5. See Idaho App. R. 24 to 31.

CASE NOTES

Cited Indian Springs LLC v. Indian Springs Land Inv., LLC, 147 Idaho 737, 215 P.3d 457 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Appellate Review, § 363.

C.J.S. — 4 C.J.S., Appeal & Error, § 554 et seq.

§ 13-204 — 13-222. Mode of taking appeal — Undertaking on appeal — Stay of proceedings — Procuring transcript — Failure to furnish papers — Effect of dismissal — Certificate of clerk — Failure to perfect appeal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.C.P. 1881, §§ 645-661; R.S., §§ 4810-4826; 1907, p. 483, § 1; R.C., §§ 4810-4820, 4821-4826; R.C., § 4820A, as added by 1911, ch. 117, § 2, p. 375; 1911, ch. 117, § 1, p. 375; C.L., §§ 4810-4826; 1919, ch. 143, § 1, p. 437; C.S., §§ 7155-7172; 1921, ch. 41, § 1, p. 50; I.C.A., §§ 11-204 — 11-221; I.C.A., § 221A, as added by 1943, ch. 89, § 1, p. 179; 1941, ch. 56, § 1, p. 115; 1949, ch. 84, § 1, p. 147; 1957, ch. 242, § 2, p. 602, were repealed by S.L. 1977, ch. 170, § 5. See Idaho App. R. 1 et seq.

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